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INDICATIONS
RESPECTING
LORD ELDON,

INCLUDING
HISTORY OF THE PENDING JUDGES' SALARY-
RAISING MEASURE.

BY
JEREMY BENTHAM, Esq.

BENCHER OF LINCOLN'S INN.

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INDICATIONS,

&c.

§ 1. *Facts suspected.* Subjects of Enquiry for the House of Commons.*

RESPECTING Lord Eldon, certain suspicions have arisen. The object of these pages is—to cause enquiry to be made, if possible, by the competent authority, whether there be any ground, and if yes, what, for these suspicions.

In general terms they may be thus expressed :—

1. That, finding the practice of the Court of Chancery replete with fraud and extortion, Lord Eldon, on or soon after his coming into office as Chancellor, formed and began to execute a plan for the screwing it up, for his own benefit, to the highest possible pitch ; to wit, by assuming and exercising a power of taxation, and for that purpose setting his own authority above that of Parliament ; which plan he has all along steadily pursued ; and, if not the present *Judges' Salary-raising Measure*, 69, anno 1822, a late Act, to wit the 3rd Geo. IV. cap. 6 is the consummation of it.

* Objection. Among these so stiled *facts* are matters of *law*.
Answer. The existence or supposed existence of a matter of law, is matter also of fact.

2. That, it being necessary, that, for this purpose, the other Westminster Hall Chiefs should be let into a participation of such sinister profit—to wit, as well for the better assurance of their support, as because the power of appointing to those offices being virtually in his hands, whatever is profit to them is so to him—the means employed by him tended to that effect also, and have been followed by it.

In relation to the whole scheme, conception may, perhaps, receive help, from a glance, in this place, at the titles of the ensuing sections. Here they are:

§ 2. Under Lord Eldon, Equity an instrument of fraud and extortion—samples of it.

§ 3. Anno 1807. Order by Chancellor and Master of the Rolls, augmenting fees of offices in the gift of one of them.

§ 4. Profit to subordinates was profit to principals: so in course to successors.

§ 5. Contrary to law was this order.

§ 6. By it, increase and sanction were given to extortion.

§ 7. So, to corruption.

§ 8. How Lord Eldon pronounced the exaction contrary to law, all the while continuing it.

§ 9. How the Chancellor had laid the ground for the more effectual corruption of himself and the other Chiefs (anno 1801).

§ 10. How the project was stopped by a Solicitor, till set a-going again, as per § 3.

§ 11. How the other Chiefs were corrupted accordingly.

§ 12. How the illegality got wind, and how Felix trembled.

§ 13. How the Chancellor went to Parliament, and got the corruption established.

§ 1. *Facts suspected—Subjects for Enquiry.* 5

§ 14. How the Head of the Law, seeing *swindling* at work, stepped in and took his profit out of it.

§ 15. How King George's Judges improved upon the precedent set by King Charles's, in the case of *ship-money*.

§ 16. How to be consistent, and complete the application of the self-paying principle.

§ 17. How Lord Eldon planned and established, by Act of Parliament, a Joint Stock Company, composed of Westminster Hall Chiefs, and other dishonest men of all classes.

§ 18. How the King's Chancellor exercised a dispensing power.

§ 19. Character evidence.

§ II. *Under Lord Eldon, Equity an instrument of fraud and extortion. Samples:—*

A single sample will serve to show in what state Lord Eldon found this branch of practice, and that it stood not in much need of improvement at his hands: by a few more which follow, a faint yet for this purpose a sufficient idea, will be given of the improvement it has actually received under his care.

By the command of a father, I entered into the profession, and, in the year 1772, or thereabouts, was called to the bar. Not long after, having drawn a bill in equity, I had to defend it against exceptions before a Master in Chancery. "We shall have to attend on such a day," (said the Solicitor to me, naming a day a week or more distant,) "warrants for our attendance will be taken out for two intervening days, but it is not customary to attend before the third." What I learnt afterwards was—that though no attendance more than *one* was ever bestowed, *three* were on every occasion regularly charged for; for each of the two falsely pretended at-

tendances, the client being, by the Solicitor, charged with a fee for himself, as also with a fee of 6s. 8d., paid by him to the Master: the consequence was—that, for every actual attendance, the Master, instead of 6s. 8d., received 1*l.*, and that, even if inclined, no Solicitor durst omit taking out the three warrants instead of one, for fear of the not-to-be-hazarded displeasure, of that subordinate Judge and his superiors. True it is, the Solicitor is not under any *obligation* thus to charge his client for work not done. He is however sure of *indemnity* in doing so: it is accordingly done of course. Thus exquisitely cemented is the union of sinister interests.* So far as regards attendances of the functionaries here mentioned, thus is the expense tripled: so, for the sake of the profit on the expense, the delay likewise. And I have been assured by professional men now in practice, that on no occasion, for no purpose, is any Master's attendance ever obtained without taking out three warrants at the least.

So much for the state of the practice before Lord Eldon's first Chancellorship: now for the state of it under his Lordship's auspices.

Within the course of this current year, disclosures have been made in various pamphlets. One of the most instructive, is the one intitled "A Letter to Samuel Compton Cox, Esq. one of the Masters

* Of the result of the above-mentioned experience, intimation may be seen in the *Théorie des Peines et des Recom-penses*, first published in French, anno 1811, or in B. 1, ch. 8, of the *Rationale of Reward*, just published, being the English of what regards *Reward* in French.

These things and others of the same complexion, in such immense abundance, determined me to quit the profession: and, as soon as I could obtain my father's permission, I did so. I found it more to my taste to endeavour, as I have been doing ever since, to put an end to them, than to profit by them.

§ 2. *Equity, Fraud, and Extortion—samples.* 7

of the Court of Chancery, respecting the practice of that Court, with suggestions for its alteration. By a Barrister. London, 1824.” Extracted from it are the following alleged samples: samples of the improvements made in the arts and sciences of fraud and extortion, by Masters in Chancery and others, under the Noble and Learned Lord’s so assiduously fostering and protecting care.

1. *In regard to attendances on and by Masters, money exacted by them as above, when no such services are performed.*

P. 12. “The issuing of warrants is another subject which requires consideration. These are issued frequently upon states of facts, abstracts of titles, charges and discharges, &c. *not according to the time consumed* in going through the business before the Master, *or his Clerk**, but according to the *length of the statement*. The Clerk takes it for granted, that the investigation of a state of facts of a given length may be *expected* to occupy a given number of hours. The Solicitor, therefore, in drawing such his bill of costs, *after the statement has been gone through*, leaves a blank for the number of warrants “to proceed on the state of facts.” *The Master’s Clerk fills up the blank*, by inserting such a number, as *might, if* there had been much contention between the different parties, have by *possibility* been issued. Thus, where *two or three* are all that, in fact, have been taken out, *ten or*

* Of the business charged for, as if done by the Master the greater part, Masters taken together, is done by the Master’s clerk. The officers stiled Six-clerks have long ascended into the Epicurean heaven, the region of sinecures: the Masters are jogging on in the road to it. I have known instances of Masterships given to common lawyers, to whom the practice of the court was as completely unknown as any thing could be.

fifteen are charged and allowed. The Solicitor produces those he has *actually received* in the course of the business, and *the Clerk* delivers to him so many *more* as are necessary to make up the requisite number.”*

P. 12. “A similar process takes place with respect to *the Report*. If the charge for the warrants alone were all that was to be complained of, the mischief would not be so great. But *you are aware, Sir,*† that an attendance on each of these warrants is charged for and allowed, and that frequently by several different solicitors,‡ so that the expense to the suitors is grievously increased.”

II. *Of the sinister profit made by the Solicitor, the greater part has for its cause the rapacity of the Master, supported by the Chancellor.*

P. 9. “Copies of proceedings of all sorts, of states of facts, of affidavits, of reports, of every paper in short which is brought into the office, are multiplied without the least necessity; and, in many instances, are *charged for, though never made*. For instance, in an amicable suit, where the only object is to obtain the opinion of the Court on some

* Thus exacting for the Master, payment for that same number of attendances not bestowed; and as to Solicitors, not only allowing but forcing them, on both sides—and there may be any number on each side—to receive payment, each of them, for the same number of attendances on his part.

† Thus saith the nameless Barrister to the Master, who has taken care all this while to know no more of the matter than Lord Eldon does. He is one of the thirteen Commissioners, commissioned by Lord Eldon, to enquire, along with Lord Eldon, into the conduct of Lord Eldon.

‡ Though no cause has more than two sides—the plaintiff's and the defendant's—yet on each side there may be as many different Solicitors as there are different parties, and to the number of them there is no limit.

doubtful point, and the Master's report is previously necessary to ascertain the facts of the case clearly, each solicitor concerned is required, in most instances, to take, or at least to pay for, a copy of the state of facts carried in, of the affidavits in support of it, and of the draft of the report; and in the event of his not taking these copies, he is not allowed to charge for any of his attendances in the Master's office."

P. 10. "The draft of the report is kept with the other papers relating to the suit, in the Master's office; and to such a length is the system of charging for copies carried, that in amicable suits it not unfrequently happens, I believe, that no copy whatever of the draft report is made, but the Solicitor merely looks over the original draft in the Master's office. Yet, even in this case, two or more copies will be charged for* as made for the plaintiff and defendants."—pp. 10, 11.

III. *How, by breach of duty as to attendance on the part of Masters and their Clerks, delay and expense are manufactured by them, and profit out of it, over and above what is exacted by them on mendacious grounds, as above.*

P. 15.—"The Masters seldom, I believe, make their appearance in Southampton-buildings before eleven, and are mostly to be seen on their way home by three o'clock at the latest."

P. 16.—"Another evil, is that of issuing warrants to different parties to attend at the same hour."

"With some exceptions (says another pamphlet, with a high and responsible name to it, page 32.) I find a general understanding prevails, that the *earliest* appointment for a Master must be

* By, and for the profit of, the Master.

eleven, and the *latest* at *two o'clock*." Consequence—warrant sent for, frequent answer—"Master full for a week : " page 31. "Court sits from ten to four." So far the authority. Court, sitting as yet in public, cannot convert *itself* into a sinecurist : this accommodation it cannot afford to any but its feudatories, who, so long as they act, the shorter the proportion of time in a day they sit on each cause, have the greater number of attendances to be paid for.

The attendance, stiled *the Master's*, is, after all, in many instances, only the *Clerk's* : so that it may be matter of calculation at the end of what period, under the cherishing care of Lord Eldon, all Masterships may have ripened into sinecures, and thus completed the course completed already by the Six-Clerkships. Per pamphlet, intitled *Rewards*, &c. p. 49. of which presently. Average emolument of one of the Master's *Clerks*, in 1822, 1823, and 1824,—2,300*l.* a year.

IV. *Strict community of sinister interest between the judicial and professional lawyers ; the judicial, principals, the professional, forced accomplices.*

P. 13. "Their bills will be less rigidly examined. Under these circumstances it is not the interest of a Solicitor to quarrel with the Master's clerk."* Both are alike gainers by the existing system.—p. 14. "In cases where the costs come out of a fund in court, *much less strictness* is likely

* "Since writing the above, I have been informed that in *one office* † the clerk is not allowed to receive gratuities, but is paid a stipulated salary ; and I understand that the business of that office is conducted as well, as expeditiously, and as satisfactorily in all respects as in other offices. It might seem invidious to say more so."—*Barrister*.

† Worth knowing it surely would be by the House of Commons, what that *one office* is.—J. B.

to prevail. If the plaintiff's Solicitor be allowed for attendances on more warrants than are actually taken out during the progress of the business, a similar allowance must be made to the defendant's Solicitor. But even if it were both the interest and the inclination of the Solicitor to amend this practice, it is not in his power so to do. He might indeed amend it so far as his own charges go, but no farther. Over those of the Master's clerks, he has no controul; and he is moreover at the mercy of the clerk. If he quarrels with the clerk, he must expect to be thwarted and delayed in every suit which comes into that office, and to have his bills rigorously taxed. The Master's clerk, with the assistance of a clerk in court, taxes the Solicitor's bill; but there is nobody to tax the Master's bill."—p. 14.

V. Corruption and extortion, by bribes, given to and received by Master's Clerks, in addition to the sinister profit, carried as above to the account of the Master.

P. 13. "The gratuities at present allowed to the Master's clerks ought to be done away with altogether. . . . Solicitors, who are in the habit of giving large gratuities to the clerks, will at any rate be looked upon favourably. Their business will be readily attended to, and oftentimes to the delay of others, who, in strictness, are entitled to priority."

VI. Anno 1814, Lord Eldon's eyes, forced to open themselves to fraud and extortion in one portentously scandalous instance—kept shut in all other instances before and since.

P. 11. "With regard to copies of particulars of sale, where an estate is sold in the Master's office, a material alteration has of late years been made. To such a height had these charges

amounted, that in one instance (*Casamajor v. Strode*) 700*l.* were claimed for *compensation-money*, in lieu of *written* copies of *particulars of sale*. In consequence of that charge, the *general order of 24th March*, 1814, was made, by which the Master is allowed sixpence a side for so many printed copies of the particulars as there are *actual* bidders, *and no more*. There seems no good reason for making even this allowance. It would be fair enough, *if the Masters are to continue to be paid by fees*, to allow the expense of copying the particular for the printer, and even a fee, if thought necessary, for settling it; but beyond that, as there is no actual trouble, there should be no charge on the suitor.”—p. 12.

Of the particulars above given, a general confirmation may be deduced from the contents of the (I now see) *named*, but not promiscuously published pamphlet, above alluded to—Mr. Vizard’s.

What is above is a small sample of that which is said to have place. Of what follows in §. 4, 8, and 9, the design is—to show how that which has place, came, and comes to have place.

§ III. *Anno 1807. Order by Chancellor and Master of the Rolls, augmenting the fees of offices in the gift of one of them.*

It consists of a printed pamphlet of 25 pages, bearing in the title page the words following :

“ List of Costs in Chancery, regarding Solicitors, and also Clerks in Court, as increased by orders of Court, dated 26th February last; issued under the joint signatures of the Right Hon. the Lord Chancellor, and Master of the Rolls: being exact copies of those orders. The same having been collated with the original Lists of the Court.”

§ 4. *Profit to Subordinates—ditto to Superiors.* 13

“ London : printed for Heraud and Co. Law Stationers, Carey-street, corner of Bell-yard. By J. and W. Smith, King-street, Seven-dials, 1807.”

In the preamble to that part which regards the “ Clerks in Court Fees,” the order speaks of itself as establishing “ a schedule of—increased fees.” Thereupon follows the schedule, and the number of the fees is forty-three.

Anno 1814. In pursuance of certain orders of the House of Commons, returns were made, amongst other Chancery offices, from that of the *Six-Clerks*, and another from that of the *Sworn and Waiting Clerks*. These are comprised in pages 5, 6, 7, 8, of a paper intituled “ Fees in Courts of Justice.” Dates of order for printing, 13th May, and 11th July, 1814. Nos. 234 and 250.

In the return relative to the Sworn Clerks, are reprinted the contents of the pamphlet above mentioned.

§ IV. *Profit to subordinates was profit to superiors ; so, in course, to successors.*

Here begins the proof of the fact—that a twopenny loaf costs twopence : in Honourable and Right Honourable House, the proof will be insufficient ; in any other, unless it were a Right Honourable one, it would be superfluous : for information, yes ; but, for reminiscence, it may have its use.

1. Wherever an office has any money value, so has the patronage of it. By the patronage, understand the power of determining the individuals by whom, together, or one after another, it shall be possessed :—the whole power or any share in it.

Take any office singly, compared with the value

of the possession, that of the patronage may be less or greater. It is most commonly less ; but it may be many times greater. Patron (say) a father near the grave ; son, in early youth : value of the office if occupied by the father, not one year's purchase ; if by the son, a dozen years or more.

Present income of a Six-clerkship, about 1,000*l.* a year : so stated to me by gentlemen belonging to the office. It is regarded as a sinecure ; patron, the Master of the Rolls. One of these Judges was Sir Thomas Sewel ; children, numerous. No further provision for this one, without injustice to others. Suppose it sold, what would it have been worth to him ? Not a fifth of what it was by being given.—2,000*l.* the price usually got by patron. So at least said, by gentlemen belonging to the office. This for the information of Mr. Robinson : the Mr. Robinson who, as far as I understand hitherto, to secure purity interdicts sale, leaving gift as he found it.

Say *patron* and *grandpatron*, as you say *son* and *grandson*. Grand patronage is not so valuable as patronage. True : nor yet valueless. In the King's Bench, is an office called the Clerkship of the Rules. Annual value, as per Finance Reports, 1797-8,—2,767*l.* Nominal joint patrons in those days, Earl of Stormont and Mr. Way ; grand patron, Earl of Mansfield, Lord Chief Justice. Trustee for the Lord Chief Justice, said Earl of Stormont and Mr. Way : price paid 7,000*l.* : circumstances led me to the knowledge of it. But for grand patron's cowardice (that cowardice which is matter of history) more might have been got for it. That or thereabouts was got for it a second time.

Would you know the money value of an office, exclusive of the emolument in possession ? to

§ 4. *Profit to Subordinates—ditto to Superiors.* 15

the aggregate value of the patronage belonging to it, add that of the grand patronage. Nor is that of great grand patronage nothing. Wherever you can see a grand patron other than the king, seeing the king, you see a great grand patron.

A Mastership was a fortune to a daughter of Lord Erskine. Had he held the seals long enough, a Six-Clerkship might have been a provision for a son, supposing the matter settled with Sir William Grant, who had no issue.

If either patronage, grand patronage, or great grand patronage of the office are valueless, so is the possession of it.

In case of abuse, profit to individuals is one thing; mischief to the public, another. Profit from fee-gathering offices may be made either by sale or by gift. When by sale, small is the mischief in comparison of what it is when by gift. But this belongs to another head.

Neither by the Chancellor, nor by the Master of the Rolls (it may be said) are nominated any of the officers to whose fees the Order gives increase. True: nor by this is the additional value, given by it to the patronage, lessened. Along with the values of the Sworn-clerkship and the Waiting-clerkship, rises that of the Six-clerkship. *Ten-pence* per folio is paid to Sworn and Waiting-clerks; *ten-pence* per *ninety words*, called a *folio*, for copies taken by them: out of each such *ten-pence*, the Six Clerks, for doing nothing, receive four-pence. This is all they receive: an *all* which, to some eyes, may not appear much too little.

The measure was one of experiment: direct object, that project of plunderage, which will be seen continued and extended by the hands of Lord

Eldon in 1807, and sanctioned by Parliament in 1822: collateral, or subsidiary object on his part, giving additional strength to the dominion of Judge-made over Parliament-made law. Full butt did this order run against a special statute, made for remedy against this very abuse: not to speak of the general principle laid down, and thus vainly endeavoured to be established, by the Petition of Rights. But as to this, see next section.

Of the price the public was made to pay for this sinister profit, not more than half has, as yet, been brought to view. The other half went to stop mouths. Waste, all of it, as well as productive of correspondent delay, is what is exacted for all three sorts of clerks. Thus felt, and even yet say, the solicitors. The plunderable fund is composed of the aggregate property of all those who can afford to buy a chance, for the article sold under the name of Equity. The greater the quantity taken by the one set, the less is left for the other—see an experience of this shewn in § 13. Preceded accordingly by the bonuses given to these more immediate cointeressees of the Chancellor and his feudatory, was a like bonus given to the fraternity of solicitors.

§ V. *Contrary to law was the order.*

Not to speak of clauses of *common*, that is to say, *imaginary law*, called *principles*, borrowed or made by each disputant for the purpose of the dispute—full butt does the order run against indisputable *Acts of Parliament*:—acts of general application, applying to taxation in any mode without consent of Parliament;—acts of particular application, applying to taxation in this particular mode:

1. First comes the *generally*-applying act, 25 Ed. I. c. 7. anno 1297. "We have granted for us and our heirs, as well to Archbishops. . . .as to Earls. . . .and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor aprises, but by the common assent of the realm."

2. Next comes 34 Ed. 1. stat. 4. c. 1. anno 1306. "No Tallage or Aid shall be taken or levied by us, or our heirs, in our realm, without the good-will and assent of Archbishops, Bishops, Lords, Barons, Knights, Burgesses, and other freemen of the land."

3. Now comes the *specially*-applying act, 20 Ed. III. c. 1. anno 1346. "First, we have commanded" (says the statute) "all our justices to be sworn, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor. And we have ordained and caused our said Justices to be sworn, that they shall not from henceforth, as long as they shall be in the office of Justice, take fee nor robe of any man but of ourself, and that they shall take no gift nor reward, by themselves nor by others privily or apertly, of any man that hath to do before them by any way, *except meat and drink. and that of small value.*"*

4. Lastly comes the all-comprehensively apply-

* The exception—*the meat and drink of small value* (need it be said?) speaks the simplicity of the times: roads bad, inns scantily scattered, judges, in their progresses in the suite of the monarch starved, if not kept alive by the hospitality of some one or other, who, in some way or other, "*had to do before them.*"

A few words to obviate cavil.

Objection. Immediately before this last-mentioned clause in the statute, runs a sort of special preamble, in these words,— "to the intent that our justices should do every right to all people, in the manner aforesaid, without more favour showing to one than to another." Well then: fee, the same to all, shews no such favour.

ing clause in the Act commonly called the Petition of Rights, 3. ch. 1. c. 1, § 10: "That no man hereafter be compelled to make, or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament."

Turn back now to the Judge-made law, and the enactors of it. Could they have had any doubt as to the illegality of what they were doing? Not unless these sages of the law had forgot the A, B, C, of it.

But a pretence is made,—and what is it? "Whereas the same" (speaking of the fees of the offices in question) "have been at different times regulated by the orders of this Court, as occasion required."

The "different times,"—what are they? They are the *one* time, at which, by a like joint order, anno 1743, 17 Geo. II. Lord Chancellor Hardwicke, his Master of the Rolls, Fortescue, "did order and direct that the Sworn-clerks and Waiting-clerks, do not demand, or take any greater fees or reward for the business done or to be done by them in the Six-clerks' office, than the fees and rewards following:" whereupon comes a list of them.*

Answer, 1. Preamble limits not enacting part:—a rule too generally recognized to need reference; disallow it, the whole mass of statute-law is shaken to pieces.

2. Fee the same to all, *does* show such favour in the extreme. A. has less than 10*l.* a-year to live on: B. more than 100,000*l.* a-year: on A. a 5*s.* fee is more than ten thousand times as heavy as on B. Of the B.'s, there are several: of the A.'s, several millions. By the aggregate of the fees exacted on the plaintiff's side, all who cannot afford to pay it, are placed in a state of outlawry: in a still worse state those, who, having paid a certain part of the way, can pay no further. Ditto on defendant's side, sells to every man, who, in the character of plaintiff, is able and willing to buy it, an unlimited power of plundering and oppressing every man, who cannot spend as much in law as he can.

* House of Commons paper, 1814, intituled "Fees in Courts of Justice," p. 5.—Returns to orders of the Honourable House

In any of the many reigns in which Parliament never sat but to give money, and in which, could Kings have kept within bounds, there would have been an end of Parliaments,—as the value of money sunk, augmentation of subordinates' fees by superiors might have had something of an excuse. But Lord Hardwicke—while he was scheming this order, he was receiving in the House of Lords, money-bills in profusion, brought up by the House of Commons. This tax of his—would the Commons have given, or would they have refused their sanction to it? Under either supposition, this tax of his imposition was without excuse.

Well, and suppose that Chancellor and his Master of the Rolls *had* done what Lord Chancellor Erskine and his Mentor did,—“*order and direct* that the said schedule of fees be adopted?” (p. 18.) But they did no such thing: they were too wary: the time was not ripe for it. George the Second had a Pretender to keep him in check: George the Third had none. True it is, that by their adroitly-worded *prohibition*, all the effect of *allowance* was produced. But, had anything been said about the Order, *there* were the *terms* of it: all that these models of incorruption had in view by it was *repression*: *allowance* was what it was converted into, by underlings acting out of sight of

of Commons of 31st March, and 2nd of May, 1814: for “a return of any increase of rate of the fees, demanded and received in the several superior *Courts of Justice*, civil or ecclesiastical, in the *United Kingdom*, by the Judges and Officers of such Courts; during twenty years, on the several proceedings in the same, together with a statement of the authority under which such increase has taken place.”

1. England, 2. Scotland, 3. Ireland, 234 and 250.—Ordered by the House of Commons to be printed, 13th May and 11th July, 1814.

superiors. Thus, on a ground of rapacity, was laid an appropriate varnish:—a coating of severe and self-denying justice.

The caricature-shops used to exhibit divers “progresses:” Progress of a *Scotchman*, Progress of a *Parson*, and some others. In these pages may be seen that of a *fee-gathering Judge*. Seen already has been the first stage of it.

If Lord Erskine, or rather the unfledged Equity-man’s Mentor, had any doubts of the illegality of what they were doing, no such doubts had Lord Eldon: for now comes another motion in the gymnastics of lawyer-craft—the last stage, or thereabouts, which for the moment we must anticipate.

The last stage in the progress, is that which is exhibited in, and by that which will be seen to be *his Act*—the Act of 1822—3 Geo. IV. c. 69, as per § 13, of these pages: the assumption per force recognized to be *illegal*; because, as will also be seen, the Court of King’s Bench had just been forced to declare as much: whereupon came the necessity of going, after all, to Parliament: *illegality* recognized, but a different word, the word *effectually*, employed, that from all who were not in the secret, the evil consciousness might be kept hid. “Whereas” (says the preamble) “it is *expedient* that some provision should be made for the permanent regulations and establishment of the fees of the officers, clerks, and ministers of justice of the several Courts of Chancery, King’s Bench, Common Pleas, Exchequer, and Exchequer Chamber, at Westminster, and of the clerks and other officers of the Judges of the same Courts; but the same cannot be *effectually* done but by the authority of Parliament”.... thereupon, comes the first enactment, enabling

Judges to deny and sell justice for their own profit, and giving legality and permanence (and, by the blessing of God! Mr. Justice Bailey and M. Justice Park! eternity) to the things of which we have been seeing samples.

As to the *effectuality* of the thing, what had been done in this way without Parliament and against Parliament, had been but *too effectually* done; and, but for the so lately disclosed *illegality*, might and would have continued to be done, as long as matchless Constitution held together. At the same time, what is insinuated is—that, although what *had* thus been done without *legally*, yet, for want of some *machinery*, which could not be supplied but by Parliament, it could not *in future* be so effectually done, as it would be with the help of such machinery, which, accordingly, the Act was made to supply. Not an atom of any such subsidiary matter is there in the Act. All that this Act of Lord Eldon's does, is to authorize and require himself, and the other Judges in question—the Westminster Hall Chiefs—to do as it had found them doing: taxing the injured—taxing them on pain of outlawry—taxing the people, and putting the money into their own pockets. In § 13, the reader will see whether what is here said of the absence of all machinery is not strictly true. Nothing whatever, besides what is here mentioned, does the Act so much as aim at.

§ VI. *By it, Increase and Sanction were given to Extortion.*

The illegality of the order supposed, taking money by colour of it, is *extortion*;—either *that* is, or nothing is.

Ask Mr. Serjeant Hawkins else. As good common law as Mr. Anybody else, or even my Lord Anybody else makes, is that made by Mr. Serjeant Hawkins; so says everybody. Look to ditto's Pleas of the Crown, vol. ii. b. i. ch. 68, § 1. In the margin especially, if you take Leach's edition, or any subsequent one, you will see a rich embroidery of references: if the ground does not suit you, go to the embroidery, and hard indeed is your fortune, if you do not find something or other that will suit you better.

"It is said" (says he) "that extortion, in a *large* sense, signifies any *oppression* under colour of right; but that in a *strict* sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due." So much for the learned manufacturer. For the present purpose, the *strict* sense, you will see, is quite sufficient: as for the *large* sense, this is the sense you must take the word in, if what you want is nonsense. If you do, go on with the book, and there you will find enough of it; and that too without need of hunting on through the references; for if, with the law-making Serjeant, you want to enlarge *extortion* into oppression, you must strike out of *extortion* the first syllable, and, with it, half the sense of the word; which done, you will have *tortion*—which will give you, if not the exact synonyme of oppression, something very little wide of it; and here, by the bye, you have a sample of the sort of stuff on which hang life and death under *Common Law*.

§ VII. *Increase and Sanction to Corruption.*

Corruption? No: no such head has the learned aforesaid manufacturer and wholesale dealer in Crown-law. No matter: he has *bribery*. Rambling over that field, he picks up *corruption*, which he takes for the same thing. Had he lived in present times, well would he have known the difference. Bribery is what no Judge practices: would you know what prevents him, see "Observations on the Magistrates' Salary-raising Bill:" Corruption—self-corruption—is what, as you may see there and here, every Westminster Hall Chief Judge has been in use to practice; and is now, by Act of Parliament, anno 1822, 3 Geo. IV. c. 69, allowed to practice.

For bribery too, Hawkins has his *strict* sense and his *large* sense. It is in its *large* sense that he fancies it the same thing with *corruption*. Neither to bribery, however, nor to corruption, does this law of his apply itself, in any other case than that in which he who commits it has something or other to do with the administration of justice.* But, as before, this is all that is wanted here.

"Bribery" (says he) "in a *strict* sense, is taken for a great *misprision* of one in a judicial place, taking any valuable thing whatsoever, *except meat and drink of small value*,† of any one

* By Lord Chief Justice Raymond, or by somebody for him, *Bench* law was afterwards made to explain and amend this *Inn of Court* law of the learned Serjeant, in addition to judicial law: corporation election bribery was thereby made bribery likewise. See the embroidery as above.

† To Serjeant Hawkins (we see) to Serjeant Hawkins, though he never was a Judge—the Statute of Edward the

who has to do before him any way, for doing his office, or by colour of his office, but of the King only.

“§ 2. But bribery in a *large* sense” (continues he) “is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the *known rules of honesty and integrity*; for the law *abhors* [inuendo the common law, that is to say, it makes the Judges abhor] *any the least tendency to corruption in those who are any way concerned in its administration.*”

Here the learned Sergeant waxes stronger and stronger in sentimentality, as he ascends into the heaven of hypocrisy, where he remains during the whole of that and the next long section.—“Abhor corruption?” Oh yes, even as a dog does carrion.

Be this as it may, note with how hot a burning iron he stamps bribery and corruption on the foreheads of such a host of sages:—of Lord Erskine (oh fie! isn’t he dead?) Sir William Grant (oh fie! was he not an able Judge?) and Lord Eldon, the Lord of Lords, with his *cæteras* the inferior Chiefs.

§ VIII. *How Lord Eldon pronounced the Exaction contrary to Law—all the while continuing it.*

The following is the tenor of a note obtained from an eminent barrister present, who had particular means and motives for being correct as to the

Third was not unknown, though so perfectly either unknown or contemned by the host of the under-mentioned Judges.

facts, and who does not, to this moment, know the use intended to be made of it. In the Court of Exchequer, February 5, 1820.

“DONNISON *v.* CURRIE.

“A question was made upon a petition whether certain allowances, made to a solicitor on the taxation of his bill of costs, were regular, which they would have been, if the Court of Exchequer adopted in its practice the additional allowances made by Lord Erskine’s order, otherwise not.

“It was objected, that those additional allowances were not adopted by the Exchequer, inasmuch as Lord Erskine’s order was not legal, and that Lord Eldon had intimated an opinion that he did not consider it as legal.

“The Chief Baron (Richards) admitted that he understood *Lord Eldon had said that he did not consider Lord Erskine’s order as being legal, but that it had been now so long acted upon, that the Court must be considered as having sanctioned it*, and that he (Richards) should follow what had been said by Lord Eldon.” Thus far the Report.

As to its being for his own benefit—see § 4.

Thirteen years, and no more, having sufficed thus to set Bench above Parliament, anno 1820, quære what is the *smallest* length of time that will have become sufficient before the reign of John the Second is at an end?

Objector.—Idle fears! how inconsiderable in all this time, the utmost of what the people can have suffered from the exercise of this power!

Answer.—True, the plunderage has its limit. Thank for it, however—not learned moderation, but a very different circumstance, which will be ex-

plained in § 13, when the Act by which the last hand put to the plan comes to be considered: moreover, what makes fees so stickled for in preference to salary is—that as plunderable matter increases, so will plunderage.

As to its being for his own profit that Lord Eldon thus continued the exaction, see § 4.

Bravo, Lord Chancellor Eldon! bravo, Lord Chief Baron Richards! “*So long!*” that is to say, just thirteen years: assuming what of course is true—that of the course of illegality begun under Lord Erskine, and pursued under Lord Eldon, the continuation commenced with his re-accession. Years, thirteen! Here then is *on* length of time which suffices to entitle the Westminster Chiefs, all or any of them, to set aside any Act or Acts of Parliament they please: and in particular any Act of Parliament, the declared object of which is to prevent them from plundering, without stint, all people, who can and will buy of them, what they call *justice*, and from denying it to all who cannot.

But Bar—what said Bar to this? Oh! Exchequer is a snug Court: small the quantity of Bar that is ever there. But, were there ever so much, Bench cannot raise itself above Parliament but it raises Bar along with it. Between Bench and Bar, even without partnership in money or power, sympathy would of itself suffice to make community of sinister interest. The same fungus which, when green, is made into Bar, is it not, when dry, made into Bench?

No want of Bar was there, anno 1801, when Lord Eldon, as per next section, laid the ground for the decision, thus pronounced, anno 1820; as little, when, the next year (1821) as per § 12,

ground and all were laid low by the shock of an earthquake. Matchless Constitution (it will be seen) may be turned topsy-turvy, and *lay-gents* know nothing of the matter : Bar looking on, and laughing in its sleeve.

Note here the felicity of Lord Eldon : the profit reaped by him from his *Hegira* of a few months. We shall soon see, how, from one of the most unexpectable of all incidents, the grand design of the Grand Master of Delay experienced a delay of six years : a delay, which, like so many of his own making, might never have found an end, but for the short-lived apparent triumph and unquiet reign of the pretenders to the throne. When, upon their expulsion, the legitimates resumed their due omnipotence, it seemed to all who were in the secrets of providence—and neither Mr. Justice Bailey nor Mr. Justice Park, nor any other chaplain of Lord Eldon's, could entertain a doubt of it—that it was only to give safety and success to this grand design of his, that the momentary ascendancy of the intruders had been permitted. The Chancellor, by whom the first visible step in the track of execution was taken, being a Whig,—not only was a precedent set, and ground thus made for the accommodation of Lord Eldon, but a precedent which the Whigs, as such, stood effectually *estopped* from controverting. Poor Lord Erskine—all that he had had time to do, was to prepare the treat : to prepare it for his more fortunate predecessor and successor. Scarce was the banquet on the table, when up rose from his nap the “giant refreshed,” and swept into his wallet, this, in addition to all the other sweets of office. As to poor Lord Erskine, over and above his paltry 4,000*l.* a-year; nothing was left him, but to sing with Virgil—*Sic vos non nobis mellificatis apes.*

§ IX. *How the Chancellor had laid the ground for the more effectual Corruption of himself and the other Chiefs.*

For this ground we must, from 1821, go as far back as the year 1801. In the explanation here given of the charges, it seemed necessary to make this departure from the order of time: for, till some conception of the design, and of a certain progress made in the execution of it, had been conveyed, the nature of the ground, so early, and so long ago laid for it, could not so clearly have been understood.

In nonsense (it will be seen) was this ground laid: plain sense might have been too hazardous. The document in which the design may be seen revealed, is another reported case, and (what is better) one already in print: *Ex-parte Leicester, Vesey junior's Equity Reports*, vi. 429. Buried in huge grim-gribber folios, secrets may be talked in print, and, for any length of time, kept. The language nonsense, the design may be not the less ascertainable and undeniable. Nonsense more egregious was seldom talked, than, on certain occasions, by Oliver Cromwell. Whatever it was to the audience *then*, to us the design is no secret *now*.

Here it follows—that is to say, Lord Eldon's.

Vesey junior, vi. 429 to 434. Date of the report, 1801, Aug. 8. Date of the volume, 1803, p. 432.—“Lord CHANCELLOR (p. 433)—A practice having prevailed, for a series of years, *contrary to the terms of an Order of the Court*, and sometimes *contrary to an Act of Parliament*, it is more consistent to suppose some ground appeared to former Judges, upon which it might be rendered *consistent with the practice*: and therefore, that it would be better to correct it in future, *not in the*

§ 10. *Chancellor stopt short by a Solicitor.* 29

particular instance. Upon the question, whether that order is to be altered, or to be acted upon according to its terms, which are at variance with the practice, I am not now *prepared* to deliver a decisive opinion: for this practice having been ever since permitted to grow up as expository of the order, if my opinion was different from what it is as to the policy of the order, according to its terms, I must collect, that there is in that practice testimony given, that, according to the terms, it would be an inconvenient order."

No abstract this—no paraphrase—*Verba ipsissima.* Eldon this all over. "None but himself can be his parallel."

Nothing which it could be of any us to insert is here omitted. Those who think they could find an interpretation more useful to Lord Eldon by wading through the five or six folio pages of his speech, let them take it in hand and see what they can make of it. All they will be able to do is to make darkness still more visible.

§ X. *How the Design was stopt short by a Solicitor, till set a-going again, as above.*

The deepest-laid designs are sometimes frustrated by the most unexpected accidents. From the hardihood of a man, whose place was at his feet, we come now to see a design, so magnificent as this of the Chancellor's, experiencing the above-mentioned stoppage of six years.

Before me lies an unfinished work, printed but not published: title "Observations on Fees in Courts of Justice:" date to the Preface, Southampton Buildings, 17th November, 1822. In that street is the residence of Mr. Lowe, an eminent

solicitor. The work fell into my hands without his knowledge. He is guiltless of all communication with me. This said, I shall speak of him as the author, without reserve. From that work I collect the following facts. Year and month, as above, may be found material.

1. Page 20. Early in Lord Eldon's first Chancellorship, to wit, anno 1801, his Lordship not having then been five months in office, Mr. Lowe, in various forms, stated to his Lordship, in public as well as in private, that *in his Lordship's Court, "the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety."* This in general terms: adding, at the same time what, in his view, were particular instances, and praying redress. Note, that to say in his *Lordship's Court*, was as much as to say, *under his Lordship's eye:—after* such information, at any rate, if not *before*.

2. Page 20. Argument thereupon by counsel: Mansfield, afterwards Chief Justice of the Common Pleas; Romilly, afterwards Solicitor-General. On the part of both, assurance of strong conviction that the charge was well founded; proportionable fears, and not dissembled, of the detriment that might ensue to the personal interest of their client from the resentment of the noble and learned Judge.

3. Pages 20, 21. Proof exhibited, of the reasonableness of these fears:—"Judge angry"... Petitioner "bent beneath a torrent of power and personal abuse."

4. Page 21. Five years after, to wit, anno 1806—Lord Erskine then Chancellor—similar address to his Lordship: a brief again given to Romilly (at this time Solicitor-General) but with no better

fortune: further encouragement this rebuff—further encouragement, to wit, to Lord Eldon, when restored.

5. Page 21. In a note, reference to the above-mentioned case, *Ex-parte Leicester*, in Vesey, junior, with quotation of that portion of his Lordship's speech, which may be seen above, in § 9. Hence a conjecture, that in that same case, Mr. Lowe himself, in some way or other, had a special interest. From the reference so made to that case, and his Lordship's speech on the occasion of it, it should seem that the design of it, as above, was not a secret to Mr. Lowe, and that his Lordship knew it was not.

Here ends the history of the *stoppage*.

6. Preface, pp. 6. 7. Upwards of eighteen months antecedently to the above mentioned 17th November 1822, say accordingly, on or about 17th May 1821, page 6, on the occasion of two causes—"Limbrey v. Gurr," and "Adams v. Limbrey,"—laid by Mr. Lowe before the Attorney-General of that time, to wit, Sir Robert Gifford, matters showing "that the increasing amount of fees and costs was like *a leprosy rapidly spreading over the body of the law*."

7. Preface, p. 3. Anno 1821, Trinity vacation—day not stated—to wit, some time between July and November—mention made of his Lordship's courtesy, and of "a promise which his Lordship" (wrath having had twenty years to cool) "very condescendingly performed." On this occasion, *hearing* before his Lordship, Master of the Rolls sitting with him: proof presumptive, not to say conclusive, that, on this occasion, Lord Erskine's Order was under consideration: "Controverted" by Mr. Lowe, a fee that had received the confirma-

tion of one of the sets of Commissioners, appointed by Lord Eldon for this and those other purposes that every body knows of.

8. Preface, p. 5. Anno 1822, Easter term. Observations on the same subject, laid before the "Master in Ordinary," meaning doubtless one of the officers ordinarily stiled *Masters in Chancery*, ten in number, exclusive of the Grand Master, the Master of the Rolls. With as good a chance of success might the gentleman have laid them before the Master of the Mint.

9. Page 5. Anno 1822, soon after the above, "Information" and "Bill" filed against Mr. Lowe, by Mr. Attorney-General, and said to be fully answered. Solicitor to the Treasury, Mr. Maule. "Answer" put in by defendant, attachment for contempt in *not* answering. Quære, what means *Information* and *Bill*?—Information in King's Bench? Bill in Chancery? But what *answer* can an information in King's Bench admit of?

10. Page 6. Shortly afterwards, observations laid by him before the Lords of the Treasury, soliciting the investigation of the charge laid before the Attorney-General (Sir Robert Gifford) *eighteen months before*, on the occasion of the cases of Limbrey and Gurr, &c. as per No. 6.

Containing, as it does, pages between 5 and 6, this same preface is too long for insertion here. Carefully have the above allegations been culled from it. Of the passage contained in the body of the work, the matter is too interesting and instructive to be omitted: it will be found below.

Here then is *one* source, from which, had it ears for corruption, Honourable House might learn at any time, whether, from the above alleged corruption, Lord Eldon has not, during the whole of his

two Chancellors, been reaping profit, and whether it was possible so to have been doing without knowing it. By Lord Eldon's present set of nominees, evidence from Mr. Lowe has, I hear, been elicited. Little, if any fruit, I hear, has been obtained from it. No great wonder any such barrenness. Anything unacceptable to their creator they could not be very desirous to receive; nor, perhaps, Mr. Lowe, since the experience had of his Lordship's "courtesy," to give.

Astonished all this while at the stoppage—astonished no less than disappointed—must have been the goodly fellowship—the Solicitors and Clerks in Court; importunate for six long years, but not less vain than importunate, had been their endeavours to obtain from Lord Eldon and his Sir William Grant—yea, even from Lord Eldon!—that boon, which with the same Sir William Grant for mediator and advocate,—at the end of six short months, we have seen them obtaining from Lord Erskine:—the said Sir William Grant being, as per § 4, in quality of patron, in partnership with the said Clerks in Court.*

* Since writing what is in the text, a slight correction has come to hand. Not the whole of John the Second's first reign, only the two last years of it experienced this disturbance. There was an old Sixty-Clerk, named *Barker*, who was a favourite at Court, and had his *entrées*. Cause of favour, this—after pining the exact number of years it cost to take Troy, Mr. Scot, junior, had formed his determination to pine no longer, when providence sent an angel in the shape of Mr. Barker with the papers of a fat suit and a retaining fee. Him the fellowship constituted for this purpose Minister Plenipotentiary at the Court. Upon an average of the two years, every other day, it was computed, the Minister sought, and as regularly obtained an audience: answer, no less regular,—"To-morrow." On this occasion, observation was made of a sort of competition in the arena of fragility between the potentate and his quondam protector, now sunk into his hum-

P. 19. "*An attempt in 1801 to reform practice.*"

Whilst Lord Thurlow held the great seal, Tables of Fees taken by officers in the Court of Chancery remained set up or affixed in their respective offices, and the most trifling gratuity was received with a watchful dubious eye, and cautious hand; but soon after the great seal was resigned by his lordship, those Tables began to disappear, and (in 1822) have *never since been renewed*: gratuities then augmented, until they had no limits: and so early as the year 1801, when increased fees and costs had attained little of the strength and consistency at which they have since arrived, the Author of these observations stated to the Court, "*that the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety.*"* to justify such statement he, by petition, set forth certain payments made, which he insisted

ble friend. Without an extra stock of powder in his hair, never, on a mission of such importance, durst the plenipotentiary approach the presence; consequence, in that article alone, in the course of the two diplomatic years, such an increase of expense, as, though his Excellency was well stricken in years, exceeded, according to the most accurate computation, the aggregate expenditure in that same article, during the whole of his preceding life.

* "On hearing the case *ex-parte* Leicester, 6th Ves. jun. 429, where it was said, "that a practice having prevailed for a series of years, contrary to the terms of an order in Court, and sometimes contrary to an Act of Parliament, it is most convenient to suppose some ground appeared to former judges upon which it might be rendered consistent with the practice; and therefore that it would be better to correct practice in future, not in the particular instance." Whereas, the Author of these observations thinks, that all practice which is contrary to an Act of Parliament, or to the terms of a standing Order of Court, originates in corruption, and ought to be abolished in the particular instance complained of, or when, or however, a practice, at variance with law or order, is first made known to the Court.

ought not to have been demanded or received, and prayed for redress; and he wrote a letter to one of the Lord Chancellor's secretaries, in which he stated an opinion, which (until the Great Charter, and the before-mentioned statutes of King Edward III. and King Richard II. are repealed) he is disposed to maintain: and which (though otherwise advised by his counsel) he then refused to retract.* The petition came on for hearing, and was supported by Mr. Mansfield and Mr. Romilly, with a spirit, and in a manner, peculiar to those advocates, and satisfactory to the feelings of the petitioner; and resisted by Mr. Attorney-General (Sir Spencer Percival) and Mr. Richards.

In vain did Mr. Mansfield urge that "*gratuity was the mother of extortion*," and Mr. Romilly state the intrepidity of his client. On that occasion, the Author of these observations, who never heard an *angry Judge* give a just judgment, bent beneath a torrent of power and *personal abuse*.

On the coming in of a new administration, in the year 1806, the Author of these observations addressed a letter to Lord Erskine, and prepared to further hear his petition; but he was given to understand by those who had once applauded his

* "Mr. Mansfield sent for the Author of these observations to his chambers, and there told him, that the Lord Chancellor had expressed displeasure at something said in a letter to his secretary, and advised an apology to be made. In reply, the Author of these observations told his counsel, that he was prepared to maintain what he had written, and that he would not make an apology; and, having read to Mr. Mansfield the draft of the letter, Mr. Mansfield said that he recollected when Lord Thurlow was made Lord Chancellor, his Lordship had mentioned to him in conversation, that he had been told that he was entitled to receive some fees, which he doubted his right to take. And Mr. Mansfield added, that such fees must have been those alluded to in the letter."

efforts,* that a change of men did not change measures; and since that time the irregular increase of fees and costs has introduced much confusion into the law.

§ XI. *How the other Chiefs were corrupted accordingly.*

As to what regards the Chief of the Exchequer Judicatory, an indication has been seen in § 6. As to what regards King's Bench and Common Pleas, the like may be seen in § 12. Invitation,—"Take and eat." Seen it has been, and will be, whether there was any backwardness as to acceptance.

Forget not that these men were, all of them, his creatures: breath of his nostrils; sheep of his pasture.

§ XII. *How the Illegality got wind: and how Felix trembled.*

Of the spread of the contagion from Chancery to Exchequer, indications were given in § 8: mention was there made of its having completed the tour of Westminster Hall. What is there said is no more than general intimation: the manner how, comes now to be set forth.

Anno 1821, lived a broken Botanist and Ex-Nursery-man, named *Salisbury*. To distinguish him from a namesake of the gentleman-class, *Salisbury minor* is the name he goes by among the

* "The letter to Lord Erskine was delivered to the late Mr. Lowton, who had a conversation with the Author of these observations thereon, and Sir Samuel Romilly sent for and had his brief to reconsider."

§ 12. *Unrighteousness exposed—Felix trembles.* 37

Rancy. At the end of a series of vicissitudes, he had sunk into one of those sinks of misfortune, in which, to help pamper over-fed judges, debtors are squeezed by jailors, out of the substance that should go to creditors. As from Smithfield an over-driven ox into a china shop—breaking loose one day from his tormentors, Salisbury *minor* found means, somehow or other, to break into one of the great Westminster Hall shops; in which, as often as a demand comes for the article so mis-called justice, bad goods are so dearly sold to all who can come up to the price, and denied, of course, to those who cannot. The china-shop scene ensued. Surprised and confounded, the shopmen exhibited that sort of derangement, which the French express by *loss of head— Ils ont perdu, la tête*. Under the notion of defence, confessions came out, which come now to be recorded.

Anno 1821, Nov. 21. (The date is material.)
Barnewall and Alderson's King's Bench Reports,
Vol. v. p. 266.

“ IN THE MATTER OF SALISBURY (IN PERSON !)

“ Salisbury *in person* had obtained a rule *nisi*, for one of the Tipstaffs of the Court, to answer the matters of his affidavit. The affidavit stated, that the Tipstaff had taken a fee of half-a-guinea, for conveying him from the Judge's chambers, (to which he had been brought by habeas corpus) to the King's Bench prison, such fee being more than he had a right to demand, according to the Table of Fees affixed in the King's Bench, in pursuance of a rule of this court.

“ Gurney and Platt shewed cause, upon affidavits, stating that the fee had been taken for a very long period of time by all Tipstaffs in both courts, and that it was allowed by the Master in costs.

“The Court, however, adverting to the statutes 2 Geo. II. c. 22, § 4, and 32 Geo. II. c. 28, § 8, and the rule of court of *Michaelmas* term, 3. Geo. II. and the Table of Fees settled in the following year, said, that it was *clear*, that the Tipstaff had no right to take any other fee for taking a prisoner from the Judge’s chambers to the King’s Bench prison, than six shillings, which was the fee allowed him in that Table. They, therefore, ordered the fee so taken to be *returned* to the complainant.”*

“Figure to himself, who can, the explosion. *Bancum regis* shaken, as by an earthquake. *Bancum regis* in an uproar! the edifice it had cost Lord Eldon twenty years to rear, laid in ruins. *We are above Parliament*, had said, as above, Lord Eldon—*Alas! no*: at the first meeting cried Lord Abbot, *I could not, for the life of me, keep where you set us, I had not nerve for it. That fellow . . . such impudence! who could have thought it? As to the fees, it is from Parliament, you see, we must have them now, if at all. It may take you some little trouble; but you see how necessary it is, and you will not grudge it.*”

This is not in the report; but it is in the nature of the case, and that is worth a thousand law reports, drawn up by toads under harrows.

Think now of the scene exhibited in and by King’s Bench:—culprit and Judge under one hood—Guilty, or Not Guilty?—Not guilty! O yes, if the Master, whose every-day business it is to *tax* costs, knows not what they are: if the Chief Justice, whose every-day business it is to *hear discussions* about costs, knows not what they are, or what they ought to be.—See now how the account

* “See the Table of Fees in the Rules of the King’s Bench, p. 241.”—Here ends the report.

§ 12. *Unrighteousness exposed—Felix trembles.* 39

stands :—the money account. Of the 10*s.* 6*d.* legalized, say 6*s.* : remains confessed to have been extorted, 4*s.* 6*d.* : sub-extortioner's profit, the 4*s.* 6*d.* : head-extortioner's, the 4*s.* 6*d.*, minus x : to find the value of x see above, § 4, and forget not, any more than Lord Eldon and Lord Abbot forgot, that pounds and thousands of pounds are made of pence and shillings.

Mark now another sort of account. Case, a criminal one. Co-defendants, had the list been complete, Tipstaff, Master, and Chief Justice. Had it been as agreeable to punishers to punish themselves as others, what a rich variety of choice was here ! Motion for imprisonment by *attachment*, as above : for this is what is meant by *answering affidavits* : Indictment for extortion, Indictment for corruption, Indictment for conspiracy ; Information for all or any of the above crimes.

Mark now the *denouement*. The case, as above, a criminal one: the crime not punished, but, without the consent of the sufferer, *compounded* for: of the fruit of the crime the exact nominal amount ordered to be restored :—not a farthing even given to the hapless masterman by whose sad day's labour thus employed, so much more than the value had been consumed in thus suing for it : with cost of affidavits several times as much. After seeing in this precedent the utmost he could hope for—what man, by whom like extortion had been suffered from like hands, would ever tax himself to seek redress for it ? Redress—administered in semblance, denied in substance. With not an exception, unless by accident, such or to an indefinite degree worse, is matchless Constitution's justice !

But the punishment ?—where was the punishment ? This is answered already. Had the order

for redress comprised a sixpence beyond the 4s. 6d. the inferior malefactor might have turned upon his principal, and the fable of the young thief, who at the gallows bit his mother's ear off, have been realized. *Isn't it you that have led me to this? These four and sixpences that I have been pocketing—is there any of them you did not know of?* Had it not been for this mishap, would not my place have been made worth so much the more to you, by every one of them? *Is there any one of them that did not add to the value of the place you will have to dispose of when I am out of it?* Why do you come upon me then? Can't you afford it better than I can? Pay it yourself.

But—the two learned Counsel, who thus fought for the 4s. 6d.—*by whom were they employed?* by Tipstaff, Master, or Chief Justice? Not by Tipstaff, surely: seeing that his cause was so much the Chief Justice's, he would not thus have flung away his money: he would not have given six, eight, or ten guineas to save a 4s. 6d.; these, if any, are among the secrets worth knowing, and which House of Commons will insist on knowing. Insist?—But when? when House of Commons has ceased to be House of Commons.

Well, then, this four-and-sixpenny tripartite business—is it not extortion? Is it not corruption? If not, still, for argument sake, suppose, on the part of all three learned persons—all or any of them—suppose a real desire to commit either of these crimes; can imagination present a more effectual mode of doing it? Till this be found, spare yourself, whoever you are, spare yourself all such trouble as that of crying out Shame, shame! Contempt of Court! Calumny! Blasphemy!

Contempt of Court? forsooth! If contempt is ever brought upon such Courts (and, for the good of mankind too much of it cannot be brought upon them) it is not in the telling of such things, but in the doing of them, that the culpable cause will be to be found.

Here then, we see, were Statutes—here (according to Lord Eldon's instructions) laid down as per § 9, at the outset—here were Rules of Court disposed of in the same way, and at one stroke. Anno 1801, in the first year of his reign—disposed of at one stroke, and in the same way. A liberty which might so easily be taken with Acts of Parliament—hard indeed it would have been, if a Judge might not take it with the Rules of his own Court. Conformable (we see here exactly) was this operation to the instructions laid down by him, as per § 9, just 20 years before, anno 1801, in the first year of his reign. As to the Rules of Court, it was not in the nature of the case that they should present any additional difficulty,—Rules which, if it were worth the trouble, and would not make too much sensation, he might have repealed in form at any time.

Be this as it may, here was the exact case, so long ago provided for by Eldonic providence: the case, which, being the principal laid down, with virtual directions given, for the guidance of his next in command, had been made broad enough to fit. "You need not be told (say these directions) how much more obedience worthy Common is than Statute law:—law of our own making, than any of the law we are forced to receive from Lay-gents. But, though you should find one of our own laws in your way—say, though with one of *their's*, you should find in your way one of

our's to give validity and strength to it—never you mind that; your business is to make sure of the fees. At the same time, for decency sake, while our underlings, who get more of them than we do, are screwing them up (and you may trust *them* for *that*) you of course will know nothing of the matter. Should any unpleasant accident happen—such as the having the Table with the lawful fee, in company with the proof of the additional money habitually exacted, bolted out upon you in the face of the public, you will of course be all amazement. Though the thing can never have taken place, but under your own eye—while the prisoner was beginning to be conducted from your own chambers, where you had just been examining him—never had you so much as suspected the existence of any such difference.”

As to Lord Abbot, whatever want of disposition on his part there may have been to pay regard to Acts of Parliament, no such want could there have been as to any such instructions as these of Lord Eldon's. But whether it was that he had not got them by heart, or that when the time came to repeat them and apply them to practice, his heart failed him,—so it was—they were not followed: and so, out came the confession that has been seen: the confession in all its nakedness.

This is not all: not more than three years before, this very fee had been taken into consideration by specially-appointed authority, and the 4*s.* 6*d.* disallowed. Under the head of ‘Tipstaff,’ “the Table of 1760,” say certain commissioners (of whom presently) “directs the fee of 6*s.* to be paid to the Tipstaff that carries any prisoner committed at a Judge's chambers to the King's Bench prison.” . . . “The fee of 10*s.* 6*d.* we conceive, to have been

§ 12. *Unrighteousness exposed—Felix trembles.* 43

taken in respect of these commitments . . . for twenty-five years, and probably longer: but *we recommend* "that the fee of 6s. only be received in future."*

Mark now the regard manifested by these commissioners—by these commissioners of Lord Eldon's—for the authority of Parliament. Recommendation soft as lambskin: of the extortion, and contempt of Parliament, impudent as it was, not any the slightest intimation, unless the rotten apology, thus foisted in instead of censure, be regarded as such. Of this recommendation the fruit has been already seen: the fee taken, and, for aught that appears, uninterruptedly taken, notwithstanding. What! In all the three intervening years, the Chief Justice—had he never heard of any such recommendation? Never heard a *Report*, of which his own court, with the fees belonging to it, were the subject? Never seen any thing of it?

And the commissioners—for what cause disallow the 4s. 6d.? Only because the Act of Parliament, and the contempt so impudently put upon it, and the extortion and corruption for the purpose of which the contempt was put, had been staring them in the face. Men, who from such hands accept, and in this way execute, such commissions—is not some punishment their due? Yes surely: therefore here it is. Public—behold their names! 1. John Campbell, Esq. Master in Chancery;—2. William Alexander, Esq. then Master, now, by the grace of Lord Eldon, Lord Chief Baron of the Exchequer;—3. William Adams, Doctor of Civil Law;—4. William Osgood, Esq.—5. William Walton, Esq.

* Report printed for the House of Commons. Date of order for printing, 14th May, 1818. Sole subject of it: "Duties, salaries, and emoluments as to the Court of King's Bench."

Accompanied are these recommendations by certain *non-recommendations*. From those as to Tipstaffs, reference is made to ditto as to Marshal: and there it is, that, after stating (p. 172) that his profit arises chiefly out of two sources, of which (be it not forgotten) the *tap* is one—with this source before them it is that (after ringing the praises of it) another of their recommendations is —“that this matter be left in the hands of the court to which the prison more immediately belongs.” In plain English, of the Chief Justice, whose interest it is to maximize the profit in all manner of ways, and of whose emoluments they saw a vast portion, rising in proportion to the productiveness of *this* source. Throughout the whole of the Report, except for a purpose such as this, not the least symptom of thinking exhibited: “*fees taken so much,—we recommend so much.*” such throughout is the product of the united genius of these five scholars of the school of Eldon.*

See now, Mr. Peel, and in its genuine colours, this fresh fruit of the consistency of your consistent friend. See, in this rich fruit, the effect and character of his commission. Oppose now, Mr. Peel, if you have face for it; oppose now, Mr. Attorney-General, if you have face for it; oppose now, Mr. Attorney-General Copley—for neither must your name be covered up—the permitting of the House of Commons to exercise the functions of the House of Commons.

Oppose now, if you have face for it, “the dragging the Judges of the land” before the Catos

* Report of the Commissioners on the duties, salaries, and emoluments in Courts of Justice:—As to the Court of King's Bench, “Ordered by the House of Commons to be printed 14th May, 1816.”

§ 13. *Corruption established by Parliament.* 45

whom you are addressing—the tribunal of Parliament. Fear no longer, Mr. Peel, if ever you feared before, the obtaining credence for your assurance—that it was by Lord Eldon his Majesty was advised to commission Lord Eldon to report upon the conduct of Lord Eldon. Mr. Canning—you, who but two years ago—so light in the scale of sentimentalism is public duty weighed against private friendship, (and such friendship!)—you who, so lately uttered the so solemn promise never to give a vote that should cast imputation upon Lord Eldon, watch well, Sir, your time, and when, *these* imputations having come on, votes come to be given on them, repress then, if possible, your tears, and, wrapping yourself up in your agony, hurry out of the House.

§ XIII. *How the Chancellor went to Parliament, and got the Corruption established.*

The explosion has been seen. Blown by it into open air, was the scheme of taxing without Parliament, and in the teeth of Parliament. At the same time, a handle for denunciation was left prominent; and it has been seen how broad an one: a handle too, which some *Wilhams* or other might at any time lay hold of, and give trouble: the trouble which the driver of pigs has with his pigs—the trouble of collecting Honourable Gentlemen together, and whistling them in when the question is called for. Delay, therefore, was not now in season. Nov. 21, 1821, was the day on which the breach, as above, was made: a session did not pass without providing for the repair of it: the 10th of June, 1822, is the day on which the first stone was laid; and how thorough and complete the repair is, remains now to be shown.

The hand of Parliament being the only applicable instrument, stooping at last to employ it could not but be more or less mortifying to a workman to whom, for so many years, it had been a foot-ball. But, to Lord Eldon, the part of the reed is not less familiar than that of the oak; and what was lost in universally applicable power will be seen gained in ease and tranquillity, reference had to this special and most valuable use of it.

Act 22 (July 1822) 3 Geo. IV. c. 69. Title, "An Act to enable the Judges of the several Courts of Record at Westminster to make Regulations respecting the Fees of the Officers, Clerks, and Ministers of the said Courts."

The preamble has been seen: business of it, skinning over the past illegality, section 1, six. Business of the first, empowering these same Judges to screw up to a maximum, and without stint, the accustomed fees: of the second, to add any number of new ones: of the third, making it to this effect, the special duty of all underlings to do whatever their masters please: of the fourth, anxiously easing them of the trouble of regulating solicitors' fees, forasmuch as nothing was to be got by it: of the fifth, providing, as has been and will be seen, for the concealment of the fees as before, should more be to be got at any time by their being concealed than by their being known: of the sixth, which is the last, providing compensation for any the smallest fee, which, by accident, should happen to slip out: should any such misfortune ever happen, the losers are not only authorized, but "*required*," to tell "*his Majesty*" of it.

For every possible additional *duty*, an additional fee or batch of fees: Good. In § 14, or elsewhere, it will be seen how it is that, by multiplying such

duties under the rose, equity pace, and equity cost, have been rendered what they are.

Every thing at "*discretion*:" (§ 1:) everything as they "*shall see fit*:" (§ 1:) the people of England, all who have redress to seek for injury from without doors—all who have to defend themselves against any of those injuries of which these same Judges are the instruments—all who have to defend themselves against injuries, the seat of which is in the pretended seat of redress—all who have to defend themselves against the attacks of any of those villains with whom Lord Eldon has thus placed these Judges, together with himself, in partnership—all, all are thus delivered up bound, to be plundered in secret, without stint or control, by the hand of these same Judges. Never could more solicitude have been demonstrated: never more appropriate talent, as well as care, expended in satisfying it: so exquisite the work, the most exquisitely magnifying microscope might be challenged to bring to view a flaw in it. In the stile of English legislation, it may be given as a model: as a study—for a young draughtsman, who, for sections a yard long, looks to be paid at so much a word. The same hand, which, had no better interest than the public's been to be provided for, would have left loop-holes, through which the entire substance of the measure might be extracted, has, in this its darling work, as if by an hermetic seal, closed all such crannies. Could this pamphlet have been made to hold it, I should have copied it, and pointed out the beauties of it. For comprehensiveness it has but one rival, and that is in the law called *Civil Law*. *Quod principi placuit legis habet vigorem*. For *principi*, put *judici*, you have

the Act of *English law*—the Act of George the Fourth.

The enacting part could not be too clear of equivocation: and not a particle is to be found in it. The preamble presented an irresistible demand for equivocation; and here it is. Seen already (in § 5) has been this same preamble, with its essential word *effectually*. Note here the use of it: it is this. The more *effectually* to turn men's minds aside from the idea of the illegality,—causing them to suppose, that though nothing had been done but what was *legal*, strictly legal, yet, to give to what had been done its full effect, legal *machinery* in some shape or other was needed, in addition to such as learned workmen stood already provided with: and that, to give existence to such additional machinery, was accordingly the object of the Act. Now, the fact is, that no such additional machinery does the Act provide or attempt to provide: not an atom of it. What it does, is—easing the hands of the criminals, of whatsoever check they felt applied by the consciousness of their so lately divulged criminality,—thus giving to them the undisturbed power of taxing the people for their own profit, without stint; and, for this purpose, rendering that power which had so long been arbitrary in *fact* at length arbitrary by *law*.

Remains the clause about keeping the Table of Fees exposed to view. They are to be “kept hung up”—these Tables of Fees—“hung up in a *conspicuous part* of the” room. Good: and while there hung up, what will be the effect of them? The same as of those hung up in virtue of those former statutes of George II., with the King's Bench Rule that followed them. The *place* they are hung up in, is to be a conspicuous one. Good:

but the *characters?* of these nothing is said; so that here is a loop-hole ready made and provided.

In the above mentioned case,* which produced the demand for this act, a document, referred to as a ground of the decision, is—a Rule of Court of Michaelmas Term, 3 Geo. II.† and “the Table of Fees settled in the following year.” In article 8 of the document intituled “Rules and Orders,” &c. mentioned in that same Rule of Court, which, without any title, is in Latin, in speaking of the Table of Fees, it is said, that it shall be “fairly written in a plain and legible hand,” With this clause lying before him—and he could not but have had it lying before him—with this clause lying before him it is, that the penner of this same Act of Lord Eldon’s contents himself with speaking about the *place*, and says nothing about the hand.

What the omission had for its cause, whether design or accident, judge whosoever is free to judge, from the whole complexion of the business. Not that even in this same Rule of Court, with its “*fair and legible hand*,” there was anything better than the semblance of honesty. Tables of Benefactors to Churches and Parishes—Tables of Turnpike Tolls—were they, even in *those* days, *written in a fair and legible hand?* No: they were painted in print hand, as they are still, in black and gold. But if instead of *fair and legible*, the characters should come to be microscopic, and as illegible a scrawl as can be found—suppose in the grim-gribber hand called *Court-hand*—a prece-

* 1821. Barnewall and Alderson, vi. 266.

† See the book intituled “Rules, Orders, and Notices, in the Court of King’s Bench . . . to the 21 Geo. II. inclusive.” 2nd edit. 1747. Page not referable to, there being no paging in the book!

dent of this sort will not be among the authorities to be set at nought: this will not be among the cases, in which, according to Lord Eldon's consistency, as per page , "It would be more consistent to suppose some ground appeared to former Judges, upon which it" (the Act of Parliament, or the Rule of Court, or both) "might be rendered consistent with the practice"—meaning, with the practice carried on in violation of them.

Lord Eldon's Act, or the *Eldon Act* should be the stile and title of this Act. Precedent, *Lord Ellenborough's Act*, so stiled in a late vote paper of Honourable House:* Lord Ellenborough's Act,—sole, but sufficient and characteristic monument, of the legislative care, wisdom, and humanity of that Peer of Parliament, as well as Lord Chief Justice.†

As to the Chancellor's being the *primum mobile* of the Act,—only for form's sake, and to anticipate cavil, can proof in words be necessary. The Bill being a Money Bill, it could not make its first appearance in the House in which Lord Eldon rules these matters by his own hand. The Members, by whom it was brought into the only com-

* May 17th, 1825.

... that "effectually," as all future corruption is sanctioned, nothing is said of any that is past. If, in the situation of the word *responsibility* were anything better than the fate of Lord Macclesfield—and on so much grounds—would await Lord Eldon, his instruments, and his accomplices. But, forasmuch as all such responsibility is a necessary evil, the only practical and practicable course would be to make a Member (Mr. John Williams, for example,) to move for a vote of Indemnity for them: which motion, to prove the necessity of it, would call forth another stream of Mr. Williams's eloquence: a reply might afford no bad occasion for the Chancellor, and a decent cloak be found for their departed

petent House, were the two Law Officers: and that by these two official persons, any such Bill could, consistently either with usage or propriety, have been brought in otherwise than under the direction of the Head of the Law, will not be affirmed by any one. The Act, then, was LORD ELDON'S ACT.

§ XIV. *How the Head of the Law, seeing Swindling at work, continued it, and took his Profit out of it.*

Swindling is an intelligible word: it is used here for shortness, and because familiar to everybody. Look closely, and see whether, on this occasion, it is in any the slightest degree misapplied.

By statute 30 Geo. II. c. 24, § 1: "*All persons who knowingly or designedly, by false pretence, or pretences, shall obtain from any person, or persons, money . . . with intent to cheat or defraud any person, or persons, of the same, . . . shall be fined or imprisoned, or . . . be put in the pillory, or publicly whipped, or transported . . . for . . . seven years.*"*

1. *All persons*, says the Act. If then a *Master in Chancery*, so comporting himself as above, is not a person, he is *not* a *Swindler*: if he is a person, *he is*.

2. And so, in the case of a *Commissioner of*

* Let it not be said, that to come within this Act it is necessary a man should have proposed to himself the pleasure of being, or of being called, a *cheat*: the man the Act means, if it means any man, is he who, on obtaining the money by any false pretence, intends to convert it to his own use. Instead of the words *cheat* and *defraud*, words which,—and not the less for being so familiar—require a definition, better could it have been, if a definition such as the above had been employed. But logic is an utter stranger to the Statute-book, and without any such help from it as is here endeavoured to be given, the Act has been constantly receiving the above interpretation in practice.

Bankrupts, if any one there be who has *so* comported himself.

3. So likewise in the case of any other functionary, holding an office under Lord Eldon.

4. So likewise in the case of every *Barrister*, practising in any of the Courts in or over which Lord Eldon is judge: in the case of every such Barrister, if *so* comporting himself.

5. Add every *Solicitor*.

If, however, it is true, as indicated in the samples given in § 2, that in the case of the Solicitor, in respect of what he does in this way, he is, by the subordinate Judge (the aforesaid Master) not only to a great extent *allowed*, but at the same time to a certain extent *compelled*,—here, in his case, is no inconsiderable alleviation: in the guilt of the official, that of the non-official malefactors is eclipsed and in a manner swallowed up and drowned.

So far as regards Masters in Chancery, to judge whether, among those same subordinate Judges under Lord Eldon, there be any such person as a *swindler*, and if so, what number of such persons; see the sample given in § 2.

Same question as to Commissioners of Bankrupts, concerning whom, except as follows, it has not as yet been my fortune to meet with any indications: Lists of these Commissioners, 14: in each list, 5; all creatures, all removable creatures—accordingly, all so many virtual pensioners during pleasure—of Lord Eldon. Further subject of enquiry, whether these groupes likewise be, or be not, so many gangs of his learned swindlers.

*Indication from the Morning Chronicle, Friday,
April 15, 1825:—*

At a Common Council, Thursday, April 14,

Information given by Mr. *Favel*. Appointment made by list 2 of these Commissioners, for proof of debts in a certain case: hour appointed, that from 12 to 1: Commissioners named in the instrument of appointment, Messrs. *Glynn*, *Whitmore*, and Mr. M. P. *Horace Twiss*. Attendance by Mr. *Glynn*, none: by Mr. *Whitmore*, as little: consequence, nothing done: by Mr. *Horace Twiss*, an hour and a half after the commencement of the appointed time, half an hour after the termination of it, a call made at the place. Had he even been in attendance from the commencement of the time, instead of stepping in half an hour after the termination of it, still, Commissioners more than one not being present, no business could (it seems) have been done. To what purpose, then, came he when he did, unless it was to make a title to the attendance-fee? Moreover, for this *non-attendance* of theirs, Messrs. *Glynn* and *Whitmore*, have they received their *attendance-fees*? If so, let them prove, if they can, that they are not swindlers. Mr. *Horace Twiss*, who does not attend any part of the time, but steps in half an hour after, when his coming cannot answer the purpose, has *he* received for that day any attendance-fee? If so, then comes the same task for him to perform. Mr. *Favel's* candour supposes some excuse may be made for Mr. *Twiss*: if so, a very lame one it will be. An option he should have had to make, is, to do his duty as a Commissioner of Bankrupts, and not be a Member of Parliament, or do his duty as a Member of Parliament (oh, ridiculous!) and not be a Commissioner of Bankrupts:—a Commissioner of Bankrupts, and, as such, one of Lord Eldon's pensioners. Convinced by his commissionership of the immaculateness of his patron, Commissioner makes a speech for patron, much,

no doubt, to the satisfaction of both. Should a Committee be appointed to inquire into Chancery practice, there, Mr. Peel, there, in Mr. *Twiss*, you have a *Chairman* for it.

Meantime, suppose, for argument sake, Mr. *Twiss* comporting himself in any such manner as to give just cause of complaint against him—be the case ever so serious—to what person, who had any command over his temper, would it appear worth while to make any such complaint? To judge whether it would, let him put the question to Mr. *Lowe*, as per § 10.

These men—or some (and which?) of them—being so many swindlers,—he who, *knowing* them to be so, *protects* them in such their *practices*, and shares with them—with all of them—in their *profits*, what is *he*? Is not he too either a *swindler*, or, if distinguishable, something still worse? If, with strict grammatical or legal propriety, he cannot be denominated a receiver of *stolen* goods,—still, the *relation* borne by him to these swindlers, is it not exactly that which the *receiver* of stolen goods bears to the *thief*? *Masters* in Chancery, 10; *Commissioners of Bankrupts*, 90; together, 100; and, upon the booty made by every one of them, if any, who is a swindler, does this receiver of a portion of their respective gains make his profit: these same swindlers, every one of them, made by him what they are.—Stop! Between the two sorts of receivers,—the thief-breeding and the swindler-breeding receivers,—one difference, it is true, there is. The *thief-breeder*, though, in so far as in his power, he gives *concealment* to his confederates, he does not, because he cannot, give them *impunity*: whereas, the *swindler-breeding* receiver, seeing that he can, gives both.

Masters in Chancery—creatures of this same

creator, almost all, if not all of them—is there so much as one of them who is not a swindler—an habitual swindler? Say no, if you can, Lord Eldon! Say no, if you can, Mr. Secretary Peel! Deny, if you can, that your Mentor is in partnership with all these swindlers. Deny it, if you can, that, out of those who have accepted from him the appointment of reporting him blameless, two are of the number of these same swindlers!

“Oh! but,” by one of his hundred mouth-pieces, cries Lord Eldon, “nothing has he ever known of all this: nothing, except in those instances in which his just displeasure at it has well been manifested. Whatever there be that is amiss, never has been wanting the desire to rectify it—the anxious desire.... But the task! think what a task! think too of the leisure, the quantity of leisure necessary—necessary, and to a man who knows not what it is to have leisure! Then the wisdom! the consummate wisdom! the recondite, the boundless learning! Alas! what more easy than for the malevolent and the foolish to bespatter with their slaver the virtuous and the wise!”

Not know of it indeed! Oh hypocrisy! hypocrisy! The keeper of a house of ill-fame... to support an indictment against him, is it necessary that everything done in his house should have been done in his actual presence? Ask any barrister, or rather ask any solicitor, whom retirement has saved from the Chancellor’s prospect-destroying power—ask him, whether it be in the nature of the case, that of all the modes in which depredation has been practising in any of his Courts, there should have been so much as one, that can ever have been a secret to him.

No time for it, indeed! Of the particular *time*

and *words*, employed by him in talking backwards and forwards, in addition to the already so elaborately-organized general mass, as if to make delay and pretences for it, a thousandth—a ten thousandth part—would have served an honest man anywhere for a reform: a reform, which, how far soever from complete, would suffice for striking off two-thirds of the existing mass, and who can say how much more?

Have you any doubt of this, Mr. Peel?—accept then a few samples.

1. Reform the first. (Directed to the proper person.) *Order* in these words. *Charge for no more days than you attend.* Number of words, eight. At the Master's office off go two-thirds of the whole delay, and with it of the expense.

2. Reform the second. *Text.* *On every attendance-day attend ten hours.* *Paraphrase.* Attend these ten, instead of the five, four, or three, on which you attend now. For your emolument, with the vast power attached to it, give the attendance which so many thousand other official persons would rejoice to give for a twentieth part of it.

3. A third reform. *In the year there are twelve months: serve in every one of them. Months excepted for vacation, those in which no wrong that requires redress is practised anywhere.*

4. A fourth reform. You are one person: any clerk of yours, another. The business of any clerk of yours is to serve *with* you, not *for* you. Serving by another is not serving, but swindling.

Small as is the number of words in the above proposed Orders, anybody may see how many more of them there are than are strictly needful to the purpose of directing what it is desired shall be done.

Numerous are the reforms that might be added: all of them thus simple; many of them still more concisely expressible.

Oh, but the *learning* necessary! the recondite lore! fruit of mother Blackstone's twice twenty years' lucubrations!—Learning indeed! Of all the reforms that have been seen, is there a single one that would require more learning than is possessed by his Lordship's housekeeper, if he has one, or any one of his housemaids?

Wisdom necessary for anything of all this? Oh hypocrites! nothing but the most common of all common honesty.

Of those whom, because unsuccessful, poor, and powerless, men are in the habit of calling *swindlers*, the seat—that of many of them at least—is in the *hulks*: of those hereby supposed swindlers, whom, because rich and powerful, no man till now has ever called *swindlers*—the seat—the seat of *ten* of them at least—is in the *House of Lords*. As between the one class and the other, would you know in which, when the *principle of legitimacy* has given way to the *greatest-happiness-principle*, public indignation will press with severest weight? Set them against one another in the balance.

1. *Quantity of mischief* produced—is that among the articles to be put into the scale?

Nothing, in comparison, the mischief of the second order:—nothing the *alarm* produced by the offence of him whose seat is in the *hulks*. Against all such offences, each man bears what, in his own estimation, is little less than an adequate security—his own prudence: a circumstance by which the *swindler* is distinguished, to his advantage, from the *thief*. No man can, for a moment, so much as fancy himself secure against the hand of the

swindler, if any such there be, whose seat is in the *House of Lords*. United in that irresistible hand, are the powers of fraud and force. Force is the power applied to the victim; fraud, the power applied to the mind of the public; applied as, with but too much success, it has been hitherto, to the purpose of engaging it to look on unmoved, while *depredation*, in one of its most shameless shapes, is exercised under the name of *justice*.

2. *Premeditatedness*—is it not in possession of being regarded as operating in extenuation of moral guilt? *Deliberateness*, as an aggravation? *Deliberateness*, does it not, in case of homicide, make to the offender the difference between death and life, under the laws of blood so dear to Honourable Gentlemen, Noble Lords, and Learned Judges? Of those swindlers, whose seat is in the hulks, how many may there not be, whose delinquency may have been the result of a hasty thought begotten by the craving of the moment? Answer and then say—of the swindler, if any such there be, whose seat is in the House of Lords, the offence is it not the *deliberate*, the *regularly repeated*, the *daily repeated*, the *authentically recorded* practice?

3. *Quantity of profit made*—is that among the circumstances that influence the magnitude of the crime? For every penny made by the swindler whose seat is in the *hulks*, the swindler, if any, whose seat is in the *House of Lords*, makes six-and-eight-pence. Six-and-eight-pence? aye, six-and-eight-pences in multitudes.

4. *Indigence*—is it not in possession of being regarded as operating in extenuation of moral guilt? All have it of those whose seat is in the *hulks*. No such extenuation, but on the contrary, the opposite aggravation have they, if any, whose seat is in the House of Lords.

5. *Uneducatedness*—is it not in possession of being regarded as operating in extenuation of moral guilt? Goodness of education, or, at least, the means of it, as an aggravation? The extenuation you have in the case of those whose seat is in the *hulks*: the aggravation, in the case of those, if any, whose seat is in the *House of Lords*.

6. *Multitude of the offenders*—does that obliterate the crime? Go then to the *hulks* and fetch the swindlers who serve *there*, to sit with their fellows, if such there be, who serve in the House of Lords.

7. *Long continuance of the practice*—is it in the nature of that circumstance to obliterate the crime? Much longer have there been swindlers out of the Master's office than there can have been in it. The earliest on record are those who "spoiled the Egyptians:" but with them it was all pure fraud: no force was added to it.

Learning—appropriate learning—of demand for this endowment, assuredly there is no want: and not only for this, which every lawyer speaks of, but for original and originating genius—an endowment which no lawyer ever speaks of. Adding to the mass in the *Augean Stable*, every ox had wisdom enough for—every ox that ever was put into it: to employ a river in the cleansing of it, required, not the *muscle*, but the *genius* of a Hercules.

Wisdom? Yes, indeed: but of what sort? Not that which is identical with, but that which is opposite to, Lord Eldon's. Years spent in the pursuit of those which we have seen to be the *actual ends of judicature*, four and twenty. True: but by every year thus spent, a man will have been rendered, not the more, but so much the less apt, for pursuing the *ends of justice*. Lord Eldon

serve the ends of justice! He knows not even what they are. Ask him what they are—at the end of half an hour employed in talking backwards and forwards, he will conclude with his speech in *Ex-parte Leicester*, and the passage that has been seen in it. Ask what are the ends of justice?—Thirty paces are more than I need go, to see boys in number, any one of whom, when the question had found him mute, or worse than mute, could answer and take his place.

Yes: in that man, in whom the will has been vitiated as his has been, the understanding—sure as death—has been vitiated along with it. Should a pericranium such as his ever meet the hand or eye of a Gall or a Spurzheim, they will find the organ of justice obliterated, and the organ of *chicane*, a *process* from their organ of *theft*—grown up in the place of it.*

* How to grant license under the guise of censure:—

Extract from the Examiner, Nov. 7, 1824:—

“THE SIX CLERKS.—In the Court of Chancery, on Monday, the following conversation occurred. An affidavit having been handed to the Lord Chancellor, his Lordship asked, ‘What is the meaning of “Agent to a Six-clerk,” which I see there? What is his business?’—Mr. Hart’s client stated, that the Agent was a person who manages the business for a Six-Clerk.—Lord Chancellor: ‘And what does the Six-Clerk himself?’—Solicitor: ‘Attends the Master.’—Lord Chancellor: ‘Then he is entirely out of the business of his own office: he does nothing in it?’—Solicitor: ‘Nothing, my Lord.’—The Lord Chancellor (after a pause): ‘When I came into this Court, the Six-Clerks were the most efficient Solicitors in the Court of Chancery. Some of the most eminent Solicitors were Clerks of that class, and used to transact their business, and draw up minutes with such ability, that we had few or no motions to vary minutes. But now the Six-Clerk abandons his business to a person who knows nothing at all about it. ’Tis no wonder then that delays have crept into the practice, which we formerly knew nothing of. However, before it proceeds fur-

§ 15. *Swindling contrived at, and profited by.* 61

If I misrecollect not, this section has been referred to for something to be said, as to the profit capable of being derived from the source here spoken of: if so, the reader's indulgence must be trusted to for a respite, till the entire of the Judges' Salary-raising measure has been found ripe for a view to be taken of it.

§ XV. *How King George's Judges improved upon the Precedent set by King Charles's, in the case of Ship-money.*—See above, § 9.

The improvement was an altogether simple one. The pocket, which received the produce of the tax imposed by King Charles's Judges, was the King's. The pocket, which received and receives the pro-

ther, I'll take care that Solicitors in this Court shall be obliged to transact their business in person."

"When I came into this Court:" that is to say, four-and-twenty years ago. Good, my Lord, and where have you been ever since? Incessant have been such threats: constant the execution of them with the same punctuality as in this case. What Solicitor, what Barrister, is there, that does not understand this? Who that does not know, that, where official depredation is concerned, what in English is a threat, is in Eldonish a licence?

When, as per sample in § 2, page , 700*l.* was exacted in reduction of a demand of we know not how much more, for office copies of a Particular of sale—office copies for which there was as much need, as for those which, according to the story, were once taken of the Bible—on that occasion was there any of this vapouring? Silent as a mouse was this Aristides, who could not endure to existence of the harmless Agent, whose agency consisted in looking over the books, to see that his employers, the Six-Drones, were not defrauded of the per centage due to them from the labours of the Sixty working-bees. But this summer-up of six-and-eight-pences was an intruder. Lord Eldon's patronage was not increased by him, while official secrets were open to him. Such was his offence.

duce of the tax imposed by King George's Judges, was and is their own.

Now for consistency—now for the use of this same principle as a precedent: a precedent set, and with this improvement, in the seats and sources of what is called justice, and thence offered to the adoption of the other departments. But what applies to this purpose will be better understood when the consummation given to the system by the pending measure comes to be brought to view.

What *they* did, they contented themselves with doing, as it were, by the *side* of Parliament: giving indeed their sanction to the operations of an authority acting without Parliament,—but not, of their own authority, taking upon themselves to obstruct and frustrate the operations of Parliament. Never did *they* levy war against the authority of Parliament. Never did *they* make known by express terms, that whatever Parliament had ordained should, as they pleased, go for anything or for nothing. Never did they adjourn obedience *sine die*. Never did they say—“*A practice having prevailed . . . contrary to an Act of Parliament . . . it would be better to correct it in future, not in that particular instance.*”*

§ XVI. *How to be consistent, and complete the Application of the Self-serving Principle.*

Now as to consistency. You, Lord Eldon, you who practise consistency,—you, Mr. Peel, you who admire it,—go on as you have begun. Assisted by your official instruments, you have planted in the statute-book, after having established it in

* Lord Eldon, in Vesey, jun. vi. p. 433, as above, p.

§ 16. *How to universalize the Self-paying Principle.* 63

practice, the self-serving, the self-corrupting, the self-gorging principle. You have rooted it in one department: plant off-sets from it in the others. You have covered with it the field of justice: go on with it, and cover with it the field of force.

Repair, in the first place, the ravage so lately made by the fabled dry-rot; that dry-rot which, not content with timber, rotted the china and the glasses. Give to the Duke of York the power of settling the pay of his subordinates, and levying, by his own order, the amount of it. . . . What! do you hesitate? Not to speak of loyalty, all pretence then to consistency is at an end with you. Dignity is, in your creed, the one thing needful: your judges are brimful of it, at least if it be in the power of gold to make them so. So far, "everything is as it should be." But the Commander-in-Chief—not to speak of the Heir to the Crown—has he not, in his situation, demand enough for plenitude of dignity? And, forasmuch as, in your mathematics, Mr. Robinson—applied to administration of justice, aptitude is *as* dignity,*—say, if you can, how the same proposition should fail when applied to the still more dignified function of wielding military force?

Apply it next to the Navy. For the benefit of Lord Melville and his Croker, give legality to

* In Mr. Robinson's speech of 16th May 1825 (as per *Globe and Traveller* of the next day) no less than *ten* times (for they have been counted) was this *ratio* assumed in the character of a *postulate*: assumed by the Finance Master, and by his scholars, *nemine contradicente*, acknowledged in that character: every one of them, for self, sons, daughters' husbands, or other *et ceteras*, panting, even as the hart panteth after the water-brooks, for the benefit of it. Number of repetitions, *ten* exactly: for Mr. Robinson had not forgot his Horace—with his *decus repetitu placebunt*.

ship-money, as, for the benefit of Lord Eldon and his Abbott, you have given it to extortion and denial of justice. Legalizing that mode of supply, now in the 19th century, you will add to it the improvements you have found for it in your own genius and your own age. You will not, as did the creatures of Charles I. make the *faux-pas* of putting the produce into the King's pocket. No; you will remember what that experiment cost his Majesty's predecessor. You will, if you can get leave of envy,—you will put it into the pockets of Lord Melville, Mr. Croker, and their friends, and thus, in the Navy department likewise, will “everything be as it should be.”

Rhetoric and fallacy all this (says somebody). Fallacy?—Not it, indeed: nothing but the plainest common sense. Suffer not *yourself* to be blinded by one of those fallacies which timidity and self-distress are so ready to oppose to indisputable truth. Say not to yourself, *all this is strong, therefore none of it is true.*

What *I do not say* is that, in the two supposed cases, the *mischief* of the application is as great as in the real one.

What *I do say* is, that the *principle* would not be *different*.—The principle different! No: nor the course taken more palpably *indefensible*.

§ XVII. *How Lord Eldon planned and established, by Act of Parliament, a Joint-Stock Company, composed of the Westminster-hall Chiefs, and Dishonest Men of all Classes.*

In general, Joint-stock Companies are no favourites with Lord Eldon; but general rules have their exceptions.

That between dishonest men of all classes,

Judges taking payment to themselves out of a fund common to both, the strictest community of interest has place, has been proved, if any thing was ever proved, over and over. A tax, into what pocket soever the money goes, cannot be imposed on *judicial pursuit*, but, to all who cannot advance the money, justice is denied, and all those who fail to do what has thus been rendered impossible to them, are delivered over to injury in all shapes, at the hands of all persons who are dishonest enough to take advantage of the licence so held out. A tax, into what pocket soever the money goes, cannot be imposed on the necessary means of *judicial defence*, but it offers, to all who can advance the money, and are dishonest enough to accept the offer, an instrument, whereby, by the power of the Judges, yet without their appearing to know anything of the use thus made of it, injury, in almost every imaginable shape, may be inflicted,—inflicted with certainty and impunity, and the correspondent sinister profit reaped, at the charge of all those who are not able to purchase the use of that same instrument for their defence. Thus, in so far as the produce of the exaction goes into the Judge's pocket, the interest of the dishonest man cannot, in either of those his situations, as above, be served, but the interest of the Judge is served along with it.

Of a partnership contract, whatever else be among its objects, one object, as well as effect, is the establishing a community of interest between the several members: and, if the persons acting so described are not dishonest; and if, between them and the Judge in question, a community of interest is not formed; let any one say who thinks he can, in what more indisputable way it is in the power of man to be dishonest; and whether, between

such a set of men and a set of dishonest Judges, it would be possible for a community of sinister interest to be formed.

Not less difficult will it be found to say, how any man, Judge or not Judge, can fail to be dishonest, who, receiving money in proportion, consents, and with his eyes open, to the habitual promotion and production of injury in all imaginable shapes, in both or either of the situations described as above.

True it is that, in general, Joint-stock Companies, any at least that can be named on the same day with this for magnitude, have not been formed without a *charter*: and that, on the occasion here in question, no charter has been employed. Not less true is it, that in the establishment of other Joint-stock Companies, the power of Parliament has been employed; and that, in the establishment of the Joint-stock Company in question, that hand, so superior to all morality, has, in the manner shown in § 13, most diligently and effectually been employed. In the concession of a charter, the hand of the Chancellor is regularly employed: and, in the passing of the Acts of Parliament in question, it has been shown, how that same learned hand has not been less primarily and effectually employed.

Such being the *partnership*, now as to the terms of it. A species of partnership as well known as any other is.—A. finds money; B. skill and labour. Of the partnership here in question, such are the terms.

Head of the firm, beyond all dispute, Lord Eldon. Found by him, in by far the greatest abundance, skill, labour, power, and example. Looked for by him, and received accordingly, profit in correspondent abundance. Behold then, the firm

of Eldon and Co. By what other name can the firm, with any tolerable degree of propriety, be denominated?

Apprized of the existence of this partnership, *Judge and Co.* is the denomination, by which, for I forget what length of time—some thirty or forty years probably—in print as well as in conversation, I have been in the habit of designating it: not a pen, not a voice having ever raised itself to controvert this undeniable truth. But, though established by intrinsic power—by that power which is so much in the habit of setting at nought that of Parliament—never till Lord Eldon stood up, and with so much ease carried the matter through as above, was this Coryphæus of Joint-stock Companies established by an express Act of Parliament.

One all-embracing and undeniable truth, when the public mind is sufficiently familiarized with it, will remove doubts and difficulties in abundance; it will serve as a key to every thing, that, in this country, has ever been done in the field of judicial procedure. From the Norman conquest down to the present time, diametrically opposite to the ends of justice, have been the actual ends of judicature: judicial establishment and judicial procedure included, but more especially judicial procedure. Paid, as Judges have been, by fees,—paid by taxes, the produce of which has all along been liable to be augmented, and been augmented accordingly by themselves, at no time could the system have been in any better state. Suppose that in those their situations, and *that* in the most barbarous times, Judges would have for the end of action the happiness of suitors?—As well might you suppose that it is for the happiness of negroes that planters have all along been flogging negroes; for the good of Hindoos that the Leadenhall

Street Proprietors have all along been squeezing and excoriating the sixty or a hundred millions of Hindoos.

§ 18. *How the King's Chancellor exercised a dispensing Power.*

To those who have read §§ 9 and 10 or § 9 alone, this can be no news. But of the nature and magnitude of the dispensing power thus assumed and exercised by Lord Eldon, conception may be helped by a few words more.

James the Second and his advisers operated openly and rashly. Prerogative in hand, they ran a-tilt against Parliament law. Lord Eldon was Lord Eldon. In a cause of no expectation, out of sight of all *lay-gents*,—out of sight of all men but his co-partners in the firm, of which he is the head; he laid down the fundamental principle. When, under a so unexpected opposition, his good humour, habitual and pre-eminent as it is, forgot itself for awhile,—not so his prudence. Taking instruction from the adversary, he made a full stop: nor, till the impediment ceased, could he be made to move a step, by all the importunity we have seen employed, in the endeavour to urge him on towards the consummation of his own schemes.

Still out of the sight of *lay-gents*, when on the cessation of the interregnum, he remounted the throne, and, like Louis XVIII. reaped the benefit of whatever had been done for the consolidation of it by the usurper,—the obstructor, persevering as we have seen him, being for the time dispirited by the rebuff received from Lord Erskine, under the tuition of the learned Jack-of-both sides,—still, he imposed not any fresh tax, contenting himself with increasing—in the manner and to the

§ 18. *Dispensing power exercised & improved upon.* 69

extent, samples of which have been seen in § 2—the produce of those he found established. Nor was this the whole of his labour or of his success : for we have seen how (still out of sight of *lay-gents*) at times and in ways altogether invisible to unlearned eyes (at what tables and over what bottles, must be left to imagination) he had succeeded in completely impregnating his Westminster Hall creatures, and, in their several Judicatories, giving complete establishment to his plan, as well in principle as in practice.

Then again, when another unexpected mishap befel him, and the webs, which the united strength of so many learned spiders had, for such a length of time, been employed in weaving, were broken through and demolished altogether by the irruption of one poor hunted fly,—even this shock, severe as it could not but be, did not make him relinquish his high purpose. Bold, where boldness was requisite, pliant where pliancy, all the sacrifice it brought him to was—the accepting from Parliament, and that too with improvement, the consummation of the ambitious and rapacious plan, at the commencement of which the nature of the case had obliged him to act, though with all prudent and practicable secrecy, against Parliament.

Thus much as to the *mode*—now as to *effect* : and the *extent* given to it. *James the Second*, with his dispensing power, placed a catholic priest in the Privy Council; and a catholic or no less obsequious protestant fellow, in an Oxford college. *John the Second* gave the dispensing power not only to himself but to all his underlings, covering thus, with a so much more profitable power, the whole field of judicature.

§ XIX. *Character Evidence.*

Against specific indications such as these, Honourable House and the Old Bailey receive a sort of evidence, which is neither quite so easily obtained, nor quite so efficient when obtained, in the Old Bailey as in Honourable House. It may be called, and, for aught I know, is called, *character evidence*. *Quantity*, in pretty exact proportion to that of the hope and fear, of which he, who is the subject of it, is the object. *Quality*, determined by the same causes. *Colours*, two—white and black.

But for my old friend Mr. Butler, no such evidence as this would have been offered—no such section as this have been written. Nor yet, if in the laud heaped up by him upon Lord Eldon, he had contented himself with using his own hand. But the hand, to which he has assigned this task, is the hand of Romilly: that confidence-commanding and uncontradictable hand, which for this purpose, resurrection-man like, he has ravished from the tomb.

Having, in the course of between thirty and forty years' intimacy, been in the habit of hearing sentiments of so widely different a tendency, on every occasion, delivered in relation to this same person,—silence, on an occasion such as the present, would have been so little distinguishable from assent, that I could not sit easy without defending myself against what might otherwise have appeared a contradiction, given to me by my departed and ever-lamented friend.

In relation to Lord Eldon, I have no doubt of Romilly's having used language, which, at a distance of time, and for want of sufficient discrimination, might naturally and sincerely enough,

by a not unwilling hand, have been improved into a sort of panegyrick thus put into his mouth. But, by the simple omission of one part of it, the strictest truth may have the effect of falsehood.

With a transcript of the panegyrick in question, or of any part of it, I will not swell these already too full pages. Suffice it to mention my sincere wish, that it may be compared with what here follows.

By my living friend,—my departed friend, I have reason to think, was never seen but in a mixt company: assured I well am, and by the declaration of my departed friend, that between them there was no intimacy. Between my departed friend and myself, confidence was mutual and entire.

Romilly was among the earliest, and, for a time, the only efficient one of my disciples.*

To Romilly, with that secrecy which prudence dictated, my works, such as they are, were from first to last a text-book: the sort of light in which I was viewed by him, was, in Honourable House, in his own presence, on an ever memorable occasion, attested by our common friend, Mr. Brougham.†

Not a *reformatiuncle* of his (as *Hartley* would have called it) did Romilly ever bring forward, that he had not first brought to me, and conned over with me. One of them—that in which Paley's love of arbitrary power was laid open—was borrowed from

* He was brought to me by my earliest—the late *George Wilson*, who, after leading the Norfolk Circuit for some years, retired with silk on his back to his native Scotland.

† *Hansard's House of Commons Debates*, 2nd June, 1818. "He (Mr. Brougham) agreed with his hon. friend, the member for A rundel, Sir S. Romilly, who looked up to Mr. Bentham with the almost filial reverence of a pupil for his tutor."

my spiders, under whose covering they may still be found. The project so successfully opposed by Lord Eldon's Sir William Grant—the endeavour to prevail upon Honourable Gentlemen to divest themselves of the power of swindling in their individual capacities,—was, to both of us, a favourite one. Nothing of this sort could ever come upon the carpet, but the character of Lord Eldon came of necessity along with it: a few lines will give the substance of volumes. The determinate opposer of everything good; the zealous, able, and indefatigable supporter of everything evil, from which, to the ruling one or the ruling few, reputed good, in any the smallest quantity, at the expense of the many, appeared derivable.

“Well! and what chance do you see of the evil genius's suffering it to pass?” This, on one part was the constant question. “Why . . . just now things are so and so:” stating, or alluding to, some hold, which, at the moment, he thought he might have upon Lord Eldon. A favourable circumstance was—that, though regarding the M. P. with the eye with which he could not but regard one of the most troublesome of his political opponents,—the Chancellor—such, in his estimation, was the legal knowledge and judgment of Romilly—was in the habit of paying to the arguments of this advocate not less, but even more, deference, than, in the eyes of the profession, was always consistent with justice; so at least I have heard, over and over again, from various professional men. In Romilly's acquirements and character he beheld a leaning-stock, the value of which he knew how to appreciate.

Now for the like, through channels less exposed to suspicion:—

“The state of the Court of Chancery is such,

that it is the disgrace of a civilized society." These are the words furnished me, in writing, by a friend, as among the very words used by Romilly, but a few months before his death, in a mixed company. It was at a *place* which, for several days of his last autumn (a place I occupied in Devonshire), afforded to the relator various free conversations, besides those at which I was present.—General result:—"Lord Eldon himself the cause of many of the abuses; of the greater part of the others, the remedy always in his own hands."

"If there is a hell, the Court of Chancery is hell." Words these, given as the very words uttered by Lord Erskine but a few weeks before his death, in conversation with another person, from whom I have them under his own hand.

Both relators most extensively known, and not more known than trusted. On any adequate occasion, both papers should be visible.

Judex à non judicando, ut lucus à non lucendo, the sort of service of all others for which Lord Eldon is not only most eminently but most notoriously unfit,* is the very service for the performance of which his unexampled power may have been

* I would willingly have said *most unfit*, but Truth, as will be seen, forbids me.

Saul and Jonathan were Lord Eldon and Lord Redesdale. Lord Eldon, Attorney-General; Lord Redesdale, Solicitor-General: Chancellors—Lord Eldon, of England; Lord Redesdale, of Ireland. Scholars of the school of Fabius, but with one difference:—by the Roman cunctation, everything was perfected; by the English and Irish, marred.

The London laid a wager with the Dublin Chancellor, which should, in a given time, do least business. Dublin beat London hollow.

Witness, Earl Grey,—in those days Lord Howick.*

"When he" (Mr. Ponsonby) "succeeded to the office," (suc-

* Cobbett's Debates, ix. 731. July 3, 1807. House of Commons. *Pensions to Chancellors*. From the Speech of Lord Howick, now Earl Grey.

originally placed, but if pretended, so falsely pretended, to be still kept in his hand.

This being premised, and admission made of the facility with which, for purposes such as have

ceeded to Lord Redesdale) "the Chancery Court of Dublin was in arrears for *six years of notices, for six hundred motions, and for four hundred and twenty-seven causes*: when he" (Mr. Ponsonby,) "quitted office, he had got under *all the notices and motions*, and had brought down the *causes to two hundred*, besides going through the current business. Had he remained in office a few months longer, not a single *cause* would have been left undetermined.

This single incident speaks volumes: it paints *matchless constitution* to the life. Take two traits, out of more.

1. Profundity and universality of the contempt of human happiness and justice, in the breasts of the ruling and would-be-ruling few.

During the whole six years, during which Lord Redesdale, with his unfitness, staring him and everybody in the face, was paralyzing justice and manufacturing misery by wholesale—not only his creator silent, but every member of the *Aristocracy* on both sides, in Ireland as well as in England. Down to this moment, never would anybody have heard of it, but for a personal squabble about Mr. Ponsonby, and a clause in his pension of retreat.

Mr. Ponsonby, with his matchless, and, but for admission, incredible aptitude,—turned out in Ireland! Lord Eldon, after his six years perpetually demonstrated inaptitude, restored, and continued with continually increasing influence!

As to *delay*, think from hence, whether, though in that, as well as all other shapes, abuse runs through every vein in the system—think whether, of that delay which drew forth the *present* complaints, there was any other cause than the difference, in point of dispatch, between this one man and every other; and whether, while this one man is where he is, deliverance from evil in that shape, any more than in any other, be possible.

Henceforward, in Honourable House, or in Right Honourable House,—on the one side, or on the other,—should any man have the hardihood to stand up and declare, that, on either side there is any more real regard for justice there than in the hulks—or in men's breasts any more sympathy for the sufferings of the people than in the cook's for the eels she is skinning—tell him of this!

2. Double-bodied monster, Head Judge and Head Party-man, back to back: fitter to be kept constantly in spirits in an anatomy school, than one hour in the Cabinet and the next hour on the Bench. Behold in this emblem one of the consequences of having one and the same man to sit as sole highest Judge, with all the property of the Kingdom at his disposal, and in the Cabinet to act as chief organizer of intrigues, and moderator of squabbles about power, money, and patronage: the Cabinet situation being the paramount one,—the most transcendent aptitude for the judicial situation cannot keep him in it, the most completely demonstrated inaptitude remove him out of it! This, under matchless constitution, under which the most loudly trumpeted tune is—the *Independence of the Judges*.

Practical lesson. Never by any other means than the making the ruling few *uneasy*, can the oppressed many obtain a particle of relief. Never out of mind should be the parable of the *Unjust Judge*.

been brought to view, he can wrap his misery-breeding meaning up in clouds, such as while transparent to accomplices and natural allies, shall be opaque to all destined victims,—I must, for shortness, refer my readers to Mr. Butler's panegyrick. Sending them to a work which has already had ten-times as many readers as any of mine can look to have, I secure myself against the consciousness of injustice, and, I hope, from the reproach of it.

I will advance further in my approach to meet him.

On any of those nice points on which, expectation being equally strong and sincere on both sides, the difference between right and wrong being scarce discernible, decisions, were it not for appearances, might, with as little prejudice to the sense of security, be committed to lot, as to reflection holding the scales of justice,—on any of those sources of doubt and display, which, in any tolerable system of legislature-made law, a line or two, or a word or two, would have dried up—Lord Eldon, at the expense of years, where another man

Such was the *alter idem* appointed by Lord Eldon to sit with *idem* and report the non-existence of delay, together with the most effectual means of removing it.

Keeping Falstaff in his eye,—inefficient myself, I am the cause (said Lord Eldon to himself) that inefficiency is in other men. In Dublin my foil, in London my Mitford shall be at the head of my securities, that nothing shall be done, in the Commission, which with my disciple Peel, to laud and defend me,—I will establish for that purpose.

As to Lord Redesdale, digression upon digression as it is, candour and sympathy compel the mention—he, like Mr. Peel, has committed one act of rebellion against his creator: he, too, has made one departure from consistency. Mr. Peel's is the *Special Jury Act*: Lord Redesdale's, the *Insolvency Act*—Should the day of repentance ever come,—each, with his Bill in his hand, may cry, like *Lovelace* under the avenging sword—Let this expiate! But Lord Eldon!—where will be his atonement? One alone will he be able to find, and that he must borrow of *Lord Castlereagh*.

would have taken days, has given to the amateurs of difficulty a degree of satisfaction beyond what any other man could have given to them: to them, satisfaction; to himself, reputation—instrument of power applicable to all purposes. This, by the having stocked his memory with a larger mass than perhaps any other man (Romilly possibly excepted) of the cases known to have sprung up within the field of Equity,—and the having also enabled himself, with correspondent facility, to make application of them to the purpose of each moment, whatsoever be that purpose, whether it be to lead aright, to mislead, or to puzzle and put to a stand, himself or others.

So much for intellectuals: now for morals. Beyond all controversy,—recognized not less readily by adversaries than by dependents, one politico-judicial virtue his lordship has,—which, in his noble and learned bosom, has swelled to so vast a magnitude, that, like Aaron's serpent-rod, it shews as if it had swallowed up all the rest. In the public recognition of it, trembling complaint seeks an emollient for vengeance; decorous and just satire, a mask. After stabbing the *Master of the Abuses* through and through with facts, Mr. Vizard takes in hand the name of this virtue—and, *innuendo*, this is the only one that can be found, lays it like a piece of goldbeater's skin on the wounds. That, which beauty, according to Anacreon, is to woman,—*courtesy*, according to everybody, is to Lord Eldon: to armour of all sorts—offensive as well as defensive—a matchless and most advantageous substitute. With the exception of those, whom, while doubting, he is ruining, and, without knowing anything of the matter, plundering,—this it is that keeps everybody in good humour: everybody—from My Lord Duke, down to the Barrister's servant-clerk. Useful here, useful there, useful

everywhere;—of all places, it is in the Cabinet that it does Knights' service. It is the *Court sticking-plaster*, which, even when it fails to heal, keeps covered all solutions of continuity: it is the *Grand Imperial cement*, which keeps political corruption from dissolving in its own filth. Never (said somebody once) never do I think of *Lord Eldon* or *Lord Sidmouth*, but I think of the aphorism of *Helvetius*—*Celui qui n'a ni honneur ni humeur est un Courtisan parfait*.

When this virtue of the Noble and Learned Lord's has received its homage, the rest may be most effectually and instructively made known by their fruits. These fruits will be his *res gestæ*: exploits—performed, throughout, or in the course of, his four-and-twenty years' dominion over the fields of judicature and legislation. Enterprizes consummated—enterprizes in progress—measures not originating with him, but taken up by him and improved—exploits performed by his own hands, exploits performed by the hands of his creatures, or other instruments;—under one or more of these heads, were any such exactness worth the space and trouble, would some of these exploits be to be entered,—under another or others, others. But, forasmuch as all *judicial* censure is altogether out of the question, and the space and research necessary for such distinctions altogether unaffordable, they must unavoidably be omitted. Under each head, it will be for the reader, from what he has seen or heard, or may choose to see or hear, to consider whether, and, if yes, how far, the imputation attaches. To improve upon these hastily collected hints, and complete the investigation, would, if performed by a competent hand, assuredly be a most interesting as well as useful work.

1. Nipping in the bud the spread of improvement over the habitable globe, ruining fortunes by

wholesale, and involving in alarm and insecurity a vast proportion of the vast capital of the country, by wantonly scattered doubts, leaving the settlement of them to a future contingent time that may never come.*

2. Rendering all literary property dependent upon his own inscrutable and uncontrolable will and pleasure.

* Of this broadcast dissemination of uncertainty, one obvious cause may naturally be found in the profit made in the two great shops—the *Private Act of Parliament shop* and the *Charter Shop*, in which the right of associating for mutually beneficial purposes is sold at so enormous a price,—for the benefit of men, by whom nothing but obstruction, in this and other shapes, is contributed.

Wheresoever, in the case of a public functionary, remuneration wears the shape of fees, there, abuse in every shape is sure to have place. Not only in judicial offices so called, but in all offices whatsoever, such cases excepted, if any, in which for special adequate cause, special exception can be shown, salary should be substituted for fees.

In the case of patents for invention, exaction in this shape has swelled to an enormous magnitude. Justice, in the shape of reward for inventive genius, denied to the relatively poor, that is to say, to probably the far greater number;—sold at an enormous price to the relatively rich: all inventions,—the authors of which are not themselves rich enough to carry them through, nor able to find a capitalist to join with them,—nipt in the bud. Official men, lawyers and non-lawyers in swarms, who contribute nothing but obstruction, murdering invention thus in the cradle, ravish from genius its reward, and in case of failure, aggravate the pressure of ill success. To see the use of *matchless constitution*, on this occasion, compare the price, paid by inventive genius, for this security, in the United States and in France. Note, that on these occasions, that plunderage may be tripled, the three kingdoms are disunited.

In all, or most of these cases, Lord Eldon, after having had a little finger in the pie when Attorney General, has a finger and thumb in it, now that he is Chancellor: adding to the pleasure of licking in the sweets, the gratification of obstructing improvement—called for this purpose *innovation*.

A set of motions, calling for returns of these several sources, and of the masses of emolument derived from each by the several functionaries, could scarcely be negatived.

3. Establishing a censorship over the press, under himself, with his absolute and inscrutable will, as censor: inviting, after publication with its expense has been completed, applications to himself for prohibition, with profit to himself in these, as in all other instances.

4. Leaving the line of distinction between cases for *open* and cases for *secret* judicature, for so long as there is any, at all times dependent on his own inscrutable and uncontrovertible will and pleasure, establishing and continually extending the practice of covering his own proceeding with the cloak of secrecy.

5. Rivetting, on the neck of the people, the continually pinching yoke of an aristocratical magistracy, by rendering all relief at the hands of the Chancellor as hopeless, as, by artificial law expenses, and participation in sinister interest and prejudice, it has been rendered, at the hands of the Judge.

6. On pretence of heterodoxy, by *ex post facto* law, made by a single Judge for the purpose,—divesting parents of the guardianship of their own children.

7. Injecting into men's minds the poison of insincerity and hypocrisy, by attaching to pretended misdeeds, sufferings, from which, by an unpunishable and unprovable, though solemn act of insincerity, the supposed misdoer may, in every case, with certainty exempt himself.*

* Questions allowed to be put to a proposed witness. Do you believe in the existence of a God? If he, who does not believe, answers that he does,—thus answering falsely, he is received: if his answer be, that he does not believe—speaking thus truly, he is rejected of course.

It is by exploits such as this, that rise has been given to this appalling question—"Which, in the capacity of a proposed witness, is most trustworthy—the Christian, Priest or Layman,

8. In all manner of shapes, planting or fixing humiliation and anxiety in the breasts of all, who, on points confessedly too obscure for knowledge, oppose him, or refuse to join with him, in the profession of opinions, in relation to which there is no better evidence of their being really his, than the money and power he has obtained by the profession of them.

9. Pretending to establish useful truth by the only means by which success to pernicious falsehood can ever be secured. Proclaiming, in the most impressive manner, the falsehood and mischievousness of every thing that is called *religion*,—by punishing, or threatening to punish, whatsoever is said in the way of controverting the truth or usefulness of it.

who, for a series of years, has never passed a day without the commission of perjury,—or the Atheist, who,—when at the instance of Lord Eldon, or any one of his creatures in the situation of Judge, interrogated as to what he believes—submits to public ignominy, rather than defile himself with that abomination in so much as a single instance? Christians! such of you as dare, think of this and tremble!

Question, as to this virtual Statute, the source and seat of which is in the breast of Lord Eldon:—if this is not a subornation of perjury, what is or can be? Lord Eldon—is his mind's eye really so weak, as, throughout the whole field of legislation, to be kept by words from seeing things as they are? * Decide who can, and give to head or heart,—sometimes to the one perhaps, sometimes to the other,—the credit of this blindness.

* As to the constant and all-pervading habit of perjury, see "*Swear not at all.*" For cleansing judicature of this abomination, a not unpromising course is in the power of individuals. Any snitor, who sees a witness of whose testimony he is apprehensive—if the witness belongs to any of the classes in question, let his counsel have in hand a copy of the statutes in question, asking him whether he did not swear observance to every one of these statutes, and whether, in the breach of this or that article, he did not constantly live: on denial, he will be indictable for perjury: on admission, it will be a question whether he can be heard.

Lord Eldon! did you never take that oath? Lord Eldon! did you never violate it? Think of this, Lord Eldon!—Mr. Peel, did you never take that oath? Mr. Peel! did you never violate it? Think of this, Mr. Peel!

10. Bearding Parliament, by openly declaring its incapacity to render unpunishable anything, to which the Judges, with the words *Common Law* in their mouths, shall have been pleased to attach punishment, or take upon them to punish:—thus, by the assumed authority of himself, and those his creatures, keeping men under the rod of punishment, for habits of action, which, in consideration of their innoxiousness, had by Parliament been recently exempted from it: as if Parliament had not exempted men from *declared* and *limited*, but for the purpose of subjecting them to *unconjecturable* and *unlimited* punishment. Witness the Unitarians, and all others, who will not, at his command thus signified, defile themselves with insincerity, to purchase the common rights of subjects.

11. Doing that which even Parliament would not dare to do, and because Parliament would not dare to do it: doing it, with no other warrant, than this or that one of a multitude of words and phrases, to which *one* import as well as *another* may be assigned at pleasure. Witness *libel*, *blasphemy*, *malice*, *contra bonos mores*, *conspiracy*, *Christianity is part and parcel of the law of the land*: converting thus at pleasure into crimes, any the most perfectly innoxious acts, and even meritorious ones: substituting thus, to legislative definition and prohibition, an act of *ex post facto* punishment, which the most consummate legal knowledge would not have enabled a man to avoid, and as to which, in many an instance, perhaps, it was not intended that it should be avoided.*

* But Parliament—contempts of its authority all the while thus continually repeated—what does it say to them? Say to them? why nothing at all to be sure: Cabinet, by which the wires of Parliament are moved, desires no better sport. Chan-

All this—which, under a really existing constitution, grounded on the greatest-happiness-principle, would furnish matter for impeachment upon impeachment,—furnishes, under the imaginary matchless one, matter of triumph, claim to reward, and reward accordingly.

cellor,—by whom the wires of Cabinet are moved, and by whom the acts of contempt are committed or procured,—looks on and laughs in his sleeve.

Contempt of Parliament indeed! Parliament desires no better than to be thus contemned: and, to be assured of this, observe whether, of the indications given in these pages, it will suffer any, and what use to be made. Contempt of Parliament! Why, all this is the work of Parliament itself. That which, with its own forms, it could not do without a world of trouble—what it might even be afraid to do—(for, where guilt abounds, so does cowardice)—it does by simple connivance, without a particle of trouble. But why talk of *fear*? On each occasion, whatever is to be done, the object with all concerned is to have it done with least *trouble* to themselves. By the hand of a Judge, those by whom Parliament is governed do, without any trouble, that which without trouble in abundance could not be done by the hand of Parliament.

In flash language, *Common Law*—in honest English, *Judge-made Law*—is an instrument, that is to say, Judges are instruments—for doing the dirty work of Parliament: for doing in an oblique and clandestine way, that which Parliament would at least be ashamed to do in its own open way.

Nor, for the allotment of these parts, is any such labour as that of concert or direction necessary. Nothing does the purpose require that an English Judge should do, more than what in his situation human nature and habit effectually insure his doing: giving, on every occasion, to his own arbitrary power every possible extent, by all imaginable means. While this is going on, so long as what he does suits the purposes of his superiors, it is regarded of course with that approbation of which their silence is such perfectly conclusive evidence. On the other hand (to suppose, for argument sake, an effect without a cause) should he ever, in any the smallest degree obstruct their purposes, any the least hint would suffice to stop him. What could any Judge do—what could even Lord Eldon hope to do—against the will of Monarchy and Aristocracy in Parliament?

12. Poisoning the fountain of history, by punishing what is said of a departed public character on the disapproving side—while, for evidence and argument on the approving side, an inexhaustible fund of reward is left open to every eye: thus, by *suppression*, doubling the effect of *subornation, of evidence*. This by the hand of one of his creatures: his own hand, without the aid of that other, not reaching quite far enough.

The title *Master of the Abuses* which occurs in page 76, may perhaps have been thought to require explanation. It was suggested by that of *Master of the Revels*, coupled with the idea of the enjoyments in which he and his have for so many years been seen *revelling* by the exercise given to the functions of it.

The *Mastership of the Revels* being abolished, or in disuse,—the *Mastership of the Abuses* appears to have been silently substituted; and Lord Eldon presents himself as having been performing the functions of the office, as yet without a salary: with his Masters in Chancery, serving under him in the corresponding capacity, and on the same generous footing, on the principal of the *unpaid Magistracy*. A subject for calculation might be—at what *anno domini*, the business of all the *denominated* Offices, possessed by those Masters and their Grand Master respectively, will have been brought into the state, into which, under his Lordship's management, that of the *Six Clerks*, has already been brought, together with that of the *Six Offices*, with which the *future* services of his Honourable Son have been so nobly and generously remunerated?—at what halcyon period, these offices will, with the rest, have been sublimated into sinecures, and the incumbents apotheosed into so many *Dii majorum*, or *Dii minorum gentium* of the Epicurean heaven?

To help conception, a short parallel between the Noble and Learned Lord, and his Noble and Learned predecessor Jefferies, may be not altogether without its use.—*General Jefferies* had his *one "campaign."* *General Eldon*, as many as his command lasted years. The deaths of Jefferies's *killed-off* were speedy: of Eldon's, lingering as his own resolves. The deaths of Lord Jefferies's victims were public—the sufferers supported and comforted in their affliction by the sympathy of surrounding thousands: Lord Eldon's expired, unseen, in the gloom of that solitude, which wealth on its departure leaves behind it. Jefferies, whatsoever he may have gained in the shape of royal favour—source of future contingent wealth,—does not present himself to us clothed in the spoils of any of his slain. No man, no woman, no child did Eldon ever kill, whose death had not, in the course of it, in some way or other, put money into his pocket. In the language, visage, and deportment of Jefferies, the suffering of his victims produced a savage exultation: in Eldon's, never any interruption did they produce to the most amiable good humour, throwing its grace over the most accomplished indifference. Jefferies was a tiger: Eldon, in the midst of all his tears, like Niobe, a stone.

Prophet at once and painter, another predecessor of Lord Eldon—Lord Bacon, has drawn his emblem. Behold the man (says he) who, to roast an egg for himself, is ready to set another's house on fire! So far so good: but, to complete the likeness, he should have added—*after having first gutted it*. One other emblem—one other prophecy. Is it not written in the Arabian Nights' Entertainments?—Sinbad the Sailor, *Britannia*: Old Man of the Sea, the Learned Slaughterer of Pheasants, whose prompt deaths are objects of envy to his suitors. After fretting and pummelling, with no

better effect than sharpening the gripe,—the Arabian slave, by one desperate effort, shook off his tormenting master. The entire prophecy will have been accomplished, and the prayers of Britannia heard, should so happy an issue, out of the severest of all her afflictions, be, in her instance, brought to pass.

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